# Defend the Defenders

## RESISTING ATTACKS ON HUMAN RIGHTS ACTIVISTS IN INDIA

HRLN
HUMAN RIGHTS LAW NETWORK

NATIONAL CONSULTATION ON

# DEFEND THE DEFENDERS

19-20 November 2011, India Islamic Centre, New Delhi

EDITED BY

**HARSH DOBHAL**

HRLN
HUMAN RIGHTS LAW NETWORK

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# Acknowledgements

This report is an outcome of the two-day National Consultation on Human Rights Defenders which saw a galaxy of rights activists, those who have dedicated their lives defending the rights of others, coming together on one platform from across the country in the face of an intensification of attacks and state repression. The presentations in this publication have been paraphrased from oral, sometimes impromptu, speeches made by the participants. We are grateful to all of them. However, a vast majority of human rights defenders, those fighting lonely battles in far flung areas with little support and no resources, could not make to this consultation. We express our gratitude to them.

We are deeply indebted to the World Sikh Organisation for participating in the consultation. Thanks to ACHR, AISA, ANHAD, APDP, Human Rights Defenders Alert, IRDS, Lawyers for Human Rights International, MASUM, Naga Mothers Association, Parivartan, PEACE, PVCHR and other organisations for coming together to build a network for the protection and promotion of human rights defenders in the country.

Organising this consultation at this scale would not have been possible without the dynamic leadership of Advocate Colin Gonsalves who conceptualised this programme.

Special thanks to Smriti Minocha and Svetlana Correya for putting together the entire programme and coordinating with a diverse team of participants and make this consultation a great success. Himanshu Kumar provided crucial insights and guidance. The young and dynamic team of HRLN members deserves special mention for their hard work. Thanks to Amy Shukla, Anant Asthana, Anuj Castelino, Bhupesh Samad, Bertyl Verma, Hitendera Chauhan, Hema Bisht, Lily Bansal, Jouhar Adeeb, Naveen Bhartiya, Rekha Srivastava, Sehba Meena, Saud Tahir, Tariq Adeeb, Vijender Singh and others.

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**— Harsh Dobhal**

# Introduction

Human rights activists have come under repeated attacks in India in recent times. Right to Information (RTI) activists have been killed and many have had cases filed against them. Journalists have been jailed in criminal defamation cases, attacked, some of them even killed, and media houses have had their offices ransacked. Tribal activists particularly in conflict areas have been hounded by the police and many of them are in jail today. A number of civil rights activists have been implicated and imprisoned in false but serious charges like sedition; many of them are facing charges under draconian laws such as UAPA and various securities laws legislated by different states. The situation has never been so dire. Any voice against the atrocities by the State is met with a bitter and prompt State vendetta. The need of the hour is to protect and defend human rights activists in India today.

There have been many initiatives in the country on defending the defenders and several organisations have developed expertise in various areas such as documentation, action alerts, approaching the UN system, legal and medical aid, counseling and so on. These initiatives have developed as a response to the cry from the grassroot activists who have been hounded by the police in many states. However, the attacks on activists have assumed a Frankenstein proportion.

It is in this context that a two day National Consultation on Defending the Human Rights Defenders was organised by the Human Rights Law Network and the World Sikh Organisation (WSO) in collaboration with ACHR, AISA, ANHAD, APDP, Human Rights Defenders Alert, IRDS, Lawyers for Human Rights International, MASUM, Naga Mothers Association, Parivartan, PEACE, PVCHR and Suraiyy Sangharsha Samiti on the 19th and 20th of November, 2011, at India Islamic Centre, Lodhi Road, New Delhi. Participants included renowned activists such as Binayak Sen, Kavita Srivastav, Himansha Kumar, Henri Tiphagne, Iftikhar Gilani, Prashant Bhushan, Teesta Setalvad, Mallika Sarabhai, Sanjeev Bhatt and many other human rights defenders from across the country.

The two day programme was sub divided into various sessions where activists and experts from various parts of India expressed their concerns and challenges and suggested ways of strengthening the solidarity and efforts

The various themes discussed were threats to human rights defenders, role of human rights organisations, situation in Punjab/'84 carnage, defenders in Kashmir, defenders in conflict states, assaults on the media, attacks on anti communal activists, attacks on trade unions, attacks on RTI activists, role of lawyers, situation of defenders in the north east, attack on environmental activists, politics of hate, assaults on activists and an open session with much hounded IPS officer Sanjeev Bhatt sharing his experiences of working in Narendra Modi's Gujarat

This consultation gave many of the participants, including the families of the activists who have been killed or victimised, a chance to interact with each other and to develop better strategies to deal with the increasing use of violence by the State against social activists It also led to the formation of Coalition for Protection of Human Rights Defenders (CPHRD) which will work towards evolving strategies of defending the defenders.

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**HARSH DOBHAL**
*Director, HRLN*

***In this context, I think, the time has come to think and sit together to talk about rights defenders, about all of us who have gathered here. We always have been talking about others, as one of my friends who will be speaking later, was telling me yesterday. Many of us today, not in Delhi so much, but outside Delhi, find ourselves at considerable risk while working on human rights issues.***

I welcome all of you here today on behalf of HRLN, ACHR, AISA, ANHAD, APDP, Human Rights Defender Alert, RDS, Jamia Teachers' Solidarity Association, Jan Sangharsh Manch, Justice for Peace Foundation, Kashmir High Court Bar Association, Lawyers for Human Rights International, MASUM, Naga Mothers' Association, Parivartan, Peace, PUCL Rajasthan, PVCHR, Surajay Sangharsh Samiti and World Sikh Organisation

Friends, we have gathered here today, at a juncture, at a time in history, when we know that the people, social activists, civil society leaders – who have always been talking about peoples' rights, talking about exploitation of the marginalised, of Dalits and Tribals, and many other disadvantaged sections of society – are coming under increasing threat by the agencies of the State and even by non state actors. The RTI activists, people working in the northeast, conflict zones of Kashmir, Jharkhand and Chhattisgarh, journalists, lawyers, individuals, organisations, anybody disagreeing with the State, anybody trying to be critical, trying to question or interrogate the State is immediately subjected to suspicion, intimidation, harassment, arrest, and torture. Sometimes such people are even being killed[1]

Well, much is made out of the largest, vibrant democracy that we are. The Indian State, very often, instead of treating such leaders and people as partners in a very vibrant democratic process, actually perceives them as threat to national security, threat to national interest and is more interested in targeting them, profiling them than to heeding them and the genuine issues they are trying to raise. The State is taking on them with full might. We have many of them here today with us to share their experiences.

In this context I think, the time has come to think and sit together to talk about rights defenders, about all of us who have gathered here. We always have been talking about others, as one of my friends who will be speaking later, was telling me yesterday Many of us today, not in Delhi so much, but outside Delhi find ourselves at considerable risk while working on human rights issues.

That is why it is important today and tomorrow to talk about rights activists, the kind of threat they face, the kind of intimidation that our works, our people, our activists face and may be try to work towards developing a response to this situation I would now like to invite Mr Colin Gonsalves, our senior colleague, senior Supreme Court advocate to come forward and set the tone for the proceedings of today and tomorrow

**COLIN GONSALVES**
*Founder Director, HRLN*

***I just want to say that Human Rights Law Network is a tiny organisation and it is not really our initiative that we do the human rights defenders work today. We are facilitating the meeting of some of the finest people in this country who fight for human rights and who have come under attack. Many of them will tell you their personal stories. So, ours is a very limited role of a facilitator. We have gathered people here who will not only tell you of the suffering that they are going through because they fight for human rights, but they will also come up with an action plan.***

---

We are very pleased to have with us today Mrs. Paramjeet Kaur who most kindly agreed to come to inaugurate this meeting. For those of you who do not know her, she is the widow of Jaswant Singh Khalra, one of the finest human rights activists this country has ever seen, who found and discovered the list of the disappeared in Punjab. Hundreds and hundreds of young Sikh boys were taken by the Punjab police, tortured and then extra judicially executed. KPS Gill said that these young boys are or have actually escaped and gone to Europe, America and other places, are illegal immigrants there and are working there. Sardar Khalra stumbled across this list when he went to the crematoriums where these bodies were burnt and the Punjab police were bold enough as to take the bodies there and burn them. That is all history now but he got the names and that case is going on still, even to this day. In 1995, he was picked up from his house and extra judicially executed for the work that he did. We follow in the footsteps of *Shaheed* Jaswant Singh Khalra.

We are inspired by him and his speeches and the way in which he organised his work. Even in the face of death, we salute the steadfastness of Khalra sahib, absolute steadfastness, as he was warned that he would be killed. He was certain. He knew about his death and he came to India from Canada where he disclosed the list of such persons. He returned from Canada to India, even though he knew that he would be picked up and executed. Paramjit Kaur, thank you very much for being with us today. I would also

introduce Balpreet from the World Sikh Organisation. The president of the organisation had certain difficulties in coming to India. We shouldn't get into the reasons of him not coming. But he had certain problems in coming to India. So, Balpreet will speak briefly in his place.

I just want to say that Human Rights Law Network is a tiny organisation and it is not really our initiative that we do the human rights defenders work today. We are facilitating the meeting of some of the finest people in this country who fight for human rights and who have come under attack. Many of them will tell you their personal stories. So, ours is a very limited role of a facilitator.

We have gathered people here who will not only tell you of the suffering that they are going through because they fight for human rights, but they will also come up with an action plan. A sort of an action plan for all of us to work together, to build a kind of a network, not that it doesn't exist, it would be already existing in some way, but to strengthen a network of human rights activists, so that whenever any of us comes under attack, any defender of human rights comes under attack, that person will not be alone, that person will not be isolated, that person will not be demoralised and say, Oh God! Look at the situation I find myself in. We will come to the assistance of such people and get them out of the trap created for them by the State. With that, we start with Paramjeet Kaur.

# DAY 1

November 19, 2011

# NATIONAL CONSULTATION ON HUMAN RIGHTS DEFENDERS

19-20 November, 2011

India Islamic Centre, Lodhi Road, New Delhi

Organised by

HRLN

Human Rights Law Network

In Collaboration with

ACHR, AISA, ANHAD, APDP, Human Rights Defenders Alert, IRDS, Jamia Teachers' Solidarity Association, Jan Sangarsh Manch, Justice for Peace Foundation, Kashmir High Court Bar Association, Lawyers for Human Rights International, MASUM, Nepa Mathura

# Session 1

## KEYNOTE ADDRESS

**PARAMJEET KAUR**

***In Punjab, Sardar Jaswant Singh Khalra took up this issue as a defender of human rights despite being well aware of the consequences. He was threatened by the State agencies that he would be reduced to another name in the list of those who had disappeared in the state. And that is exactly what happened.***

*Paramjeet Kaur is the widow of the late human rights activist Jaswant Singh Khalra. She is currently continuing the work of her husband in Punjab.*

My story is not one of a victim but rather that of a victimised defender. My late husband Jaswant Singh Khalra was a human rights defender and the work he took up was essentially related to human rights. Linked to his story is the story of Punjab. In reality the story of Punjab was different. There were some problems in Punjab, mainly social, the issue was water and the conflict was more about the rights of Punjab as a state. However, the politically inclined morphed the issue into a religious one. Eventually the entire conflict was painted in a religious colour. The most sacred places of Sikhs were attacked with the help of tanks. The issue thus snowballed and before we knew it, Sikhs were being attacked. In 1984 the social aspect of the issue was completely forgotten and it had become a religious war.

The Sikh religion has its own unique tradition and history. In 1943, Sikhs laid down their lives for the independence struggle. But when it came to state sponsored violence in Punjab, the Sikhs were completely isolated. After Indira Gandhi was murdered in 1984, the Sikhs were brought to streets and burnt alive. Women were raped and Sikh religious places were desecrated.

Even the Supreme Court and the high court were closed down during this time. Selective killing of children from each house is one of the appalling realities of the Sikh genocide. The case of Punjab was one of the first cases of state violation in India. If the government had taken a different stance in this situation, I am sure incidents like Babri Masjid would have never have happened. There would have been no riots in Gujarat and the injustices that people of Kashmir, the Northeast, Andhra Pradesh, Chhattisgarh and Orissa are facing would have never reached such a magnitude.

In Punjab Sardar Jaswant Singh Khalra took up this issue as a defender of human rights despite being well aware of the consequences. He was threatened by the state agencies, to be reduced to another name in the list of those who had disappeared in the state And that is exactly what happened He was apprehended from his home on September 6, 1995, and subsequently tortured and killed We started our legal fight in the Supreme Court (SC). We filed a petition on September 9, 1995 in the SC We brought this case from the SC to CBI, CBI to sessions court, sessions court to high court and then back to the Supreme Court

In the short period that Sardar Khalra worked for human rights, he did not get adequate opportunities. Due to his inspiration we continue our human rights work in Punjab till today For 16 years we have fought approximately 2097 cases including that of Sardar Jaswant Singh Khalra The list of these cases was drafted by Khalrap from the list of people buried in three crematoriums in Punjab. The affidavit was filed and the CBI admitted the truth about the deaths of the victims and consequently ordered that an inquiry be convened The Supreme Court acknowledged that from 1984 to date, only a handful of people were compensated for their loss However, the issue is not limited to the work of Sardar Jaswant Singh Khalra, it is graver than that While Sardar Khalra only focused on three crematoriums, there are numerous other crematoriums all over Punjab where thr people who disappeared were disposed off To date the relatives of the victims are being threatened and killed by the police The intention behind Sardar Khalra's work was to stop mass murdering and to stop the ensuing injustices done to the families of victims, not just to bring to trial the cases of the victims

Therefore, the work of Jaswant Singh Khalra is important The voice of a human rights activist is crucial in a country where human rights victims are deprived of their rights in the political and legal systems. It is true that there have been no outbursts of violence in Punjab since Sardar Khalra's death, but the people who reside there still live in fear and apprehension Cases like those of Shameender Shera, Surjeet Singh and Pal Singh still happen in Punjab The gravity of the situation can be gauged from the fact that Sardar Khalra was murdered despite his press release on 19 February 1995 He specifically mentioned in this release, later filed in the court, that his life was under threat and if something happened to him, it should be understood that KPS Gill and Beant Singh were responsible for it This is where the real challenge faced by the human rights defender lies today, i e., a man who openly claims that he is about to get murdered and does get murdered, is not given justice by the judiciary. This is what all of us working in this field need to understand and think about.

The situation is not limited to Punjab. There are many disappearances happening in areas like Andhra Pradesh and Kashmir These states have appointed commissions to probe the matters. In Punjab, however, there is no such initiative taken by any government or even non government agencies I have failed to discern the reasons behind this. Without a proper enquiry is it possible to get accurate data on the disappearances of people and to further the work from a human rights platform? I believe that we need to draft a national level strategy under which Punjab should be designated as a priority state Violations do occur in other states as well, but, in my opinion, the situation in Punjab



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is worsening with time. The appalling details of Sardar Khalra's legal battle are a case in point. The court case was fought as a defense case, a state against state case, that is, CBI against Punjab Police wherein even the name of Sardar Khalra was obliterated from the proceedings, leaving little hope for any sense of justice. According to the lawyers, the little compensation that the victims received was only because of the media pressure, and not because of any inherent justice in the system. It is extremely disheartening to note that if human rights defenders are treated in such a way, what hope do the common people have with regard to realising human rights?

Thus, the intention of this meeting is to focus on devising state oriented programmes that will provide a platform to victims who have otherwise been silenced and subjugated. It is frustrating that nothing has been done by the government to provide relief to the victims, either socially or economically. I have often repeated at many places that one of the foremost objectives to be accomplished is to punish the offenders. The Indian state should admit its mistakes with regard to violations of the human rights of its own people. The authorities should punish the guilty and compensate for losses that numerous families have suffered. The people of Punjab and elsewhere should have their birth right returned, i.e., a life with dignity. Until the culprits are punished, I sincerely doubt that the masses will forget the atrocities committed against them and their family members. The political leaders in the state have often remarked that the people should forget what happened in the past, but forgetting becomes difficult till a sense of closure has been achieved. The story of human rights violations are not over in Punjab and it will not be until the guilty are punished.

These are the issues and concerns that I find immediate in the context of Punjab and the nation. I also believe that the discussion has only started. There is a lot more to consider and a lot of actions to be taken. I am hoping that this meeting will play a key role in doing so.

# Session 2

# CAN WE EVER FORGET?

**BALPREET SINGH**
*World Sikh Organisation*

***In victim studies, the victim is often told that nothing happened and if something did happen, then forget it. It happened a long time ago, move on with your life and it is probably your fault anyway. That is what is happening with an entire community and we are just one such victim. I believe it is rational to say that the State must be governed by the law.***

The World Sikh Organisation (WSO) of Canada was founded 27 years ago. I am the legal counsel of this Organisation and I am delivering a message on behalf of our president, Mr. Prem Singh, who could not be a part of this event due to certain circumstances. This event is very important and momentous occasion for us as we get together and remember the Sikh martyr Sardar Jaswant Singh Khalra. The people who got to know Jaswant Singh Khalra personally will always have very fond and vivid memories of him. He was so passionate about his work. Once, during a visit to Canada, members of WSO tried to convince him to stay in Canada as his life was under threat in India. He could have easily received the status of an approved refugee and stayed in Canada with his family until it was safe to return to India. The officials also guaranteed the same. However, he was so engaged in his work that he refused the offer.

He stated that if he stayed in Canada what would he say to the families for whom he worked for in India? If he was afraid for his life and could not return to Punjab, why would anybody in Punjab who was affected come forward and fight for their rights? Why should they tell their story to the world?

As such, he was determined to return to Punjab and continue his work, whatever the consequences may be. He returned that summer to Punjab and in September 1995 he was abducted by the Punjab police. He was held in custody illegally and despite an international outcry, he was murdered and his body thrown into a river.

Khalra was the voice for the families who had lost their sons, daughters and husbands during the 1984 genocide. He forced an unwilling state to concentrate on hard facts and that is what a human rights defender does. It is about going into the field and searching for hard facts and proclaiming these facts to the world to show them that there is something wrong here. He was fearless, selfless and diligent. In short, Jaswant Singh Khalra, to me and to all of us, was the ideal human rights activist. It is befitting that we are all here today to commemorate his memory. There are many other ways that we can honour his memory such as plaques and statues but they are made of stone and do not exemplify the living spirit that encompassed Jaswant Singh Khalra. This is why we are so excited about this project as it is a living and breathing project that has so much potential. It reaches out to carry on the flame that Jaswant Singh Khalra held in his hand. It takes forward his mission. That is why WSO is present here today as Sardar Khalra was such an important person to us.

This brings me to the second reason as to why I am so inspired and overwhelmed to be here. I am surrounded by human rights activists, not just people representing Punjab, but people from all over India who despite threats to their lives and challenges to their liberty still stand up for the common people. We also work as human rights activists in Canada but the challenges that we face are insignificant to what you have to face here in India. Your work is absolutely essential. Make no mistake that you are the people who can be the voice that will tell the stories of human rights victims to those who hold a position of power. I am going to talk about why we cannot forget the 1984 genocide and I think we already know the answer to that. If we forget the anti Sikh genocide of 1984, we forget the fact that those prompting killings of one minority community were State agents.

If we forget that, then we are bound to repeat that. It will come back in a different form. It might come back as the killing of Christians in Orissa or in any other form, if we forget. If we turn a blind eye to the excesses committed by the State agencies and by the security forces, including the disappearances and torture of human beings, then what would happen, and what has happened, is that those excesses would become systemic and normalised. They will become a pack of what is normal for these security agencies. In every disturbed area, whether it is Punjab, Kashmir, Assam or anywhere else, we see that the same pattern of innocent people being taken away from their houses, being killed and tortured, is being repeated. If we forget the abuses of those politicians and those police officers, we will see them rise in the ranks. If we don't deal with it, we will see them increase in rule. And what message does that send to the next generation of politicians and police officers? It tells them that if you crush the human rights of the so called anti nationals in the disturbed areas, you will be promoted. And that is why we cannot simply forget, forgetting would simply mean that we are bound to repeat our history. It will happen over and over again.

This project will hopefully create some ideas as to how we can deal with these issues. This is your project – and we as a Canadian organisation are here to support you in any shape or form. It is no secret that when we associate ourselves with any human rights work, people may say that this is anti national. This is a radical and an extremist point of



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view. Even when the Sikhs in Canada talk about Punjab, we are labeled as being radical. They say that the second generation of Sikhs has become extremist. That is not the case. This is actually the discourse of victimisation. In victim studies, the victim is often told that nothing happened and if something did happen, then forget it. It happened a long time ago, move on with your life and it is probably your fault anyway. That is what is happening with an entire community and we are just one such victim.

I believe it is rational to say that the State must be governed by the law. It is not radical to say that humans/citizens, regardless of their political beliefs, possess certain inalienable human rights that cannot and should not be violated. Perhaps in another time and in another place people who have these beliefs would be considered to be patriots as opposed to anti nationals. I look forward to the outcome of this meeting and hope that it serves well in commemorating Sardar Khalra.

# Session 3

# THREATS TO HUMAN RIGHTS DEFENDERS

&

# Session 4

# ROLE OF HUMAN RIGHTS ORGANISATIONS

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**KAVITA SRIVASTAV**
*Social Activist and National Secretary, PUCL*

***We need to understand that the threat is all pervasive. It is a threat when you are involved in any small everyday engagement of trying to protect human rights. If the threat exists there then it also changes the whole situation. It's not just Kashmir or Manipur but all of India that is going to be like Kashmir and Manipur as we see the whole phenomenon of Chhattisgarisation that is already happening.***

This meeting is extremely timely and is an opportunity for all of us to not just talk to each other but actually collectively think about what to do and share our views in such a manner that we really move forward. This meeting was born out of the kind of attacks that all of us as human rights workers are facing. I too was attacked by the Indian police, in tandem with the judiciary, last month (October, 2011). I am a simple human rights worker and I want to discharge the very obligation of being a human rights worker if I call myself that. But of late, every act that one performs is now coming under the suspicion of the Indian State apparatus.

I am presumably living in one of the 'safest' states, where the rule of law supposedly prevails (in Rajasthan). It is not conflict ridden in the sense that the war, that the Indian State is making against its own people in the name of Maoism and terrorism, is not all pervasive. While profiling of Muslims does happen, false cases are made out against one section of the Muslim youth as well as against those struggling against displacement, mining and evictions. Innocent activists and affected people are sent to jail. Nevertheless, there is an overall environment where you can dialogue with the government in the state of Rajasthan and express your dissent democratically.

In this supposedly 'safe' state, where the rule of law prevails, 150 Rajasthan policemen led by seven members of the Chhattisgarh police came to my house, surrounded the en

ture area in order to look for a school teacher, Soni Sori, an *adivasi* woman, who they said was a suspected Maoist. They came with a huge force to intimidate us and to destroy any confidence that we have. Their intention primarily was to malign my name in the area that I live, so that I lose out on respect and trust in my neighbourhood. What is shocking is that the first class magistrate himself violated the law and issued search warrants for my house. The police further violated all procedures of search, and of course were embarrassed when they found nobody.

What we have seen here and what I would like to term it as, and begin this meeting with, is the Chhattisgarhisation of the Indian police force. Everybody knows me and my work for the last 25 years in the state. I am a really well known activist. Yet, 150 policemen were provided with by the Jaipur police, to survey the area I reside, along with several armed constabulary men. So, if Rajasthan police, especially in Jaipur where I have spent a crucial part of my life, can do this then it can happen to anyone and anywhere.

I also want to talk a little about the organisation that I belong to, the People's Union for Civil Liberties (PUCL). It is one of the oldest organisations in India though it is very small. There is very little that a human rights organisation like ours can do. We cannot bring about big social change, but we perhaps can make some little difference to the lives of the common people who face everyday violations due to their class, caste, gender and other social relations. Now the PUCL, which is a national (all India) organisation, has a presence in almost every state, is frequently being called a front of Maoists or being sympathetic to terrorists, as we have tried to question the police version of the attacks that are taking place on the life and liberty of the Indian people. We collectively, with other organizations, have tried to put together an alternative narrative to the various violations that are taking place. So our intentions, according to the police, administration and the judiciary, is suspect. It is our intent which is being criminalised.

Several of our PUCL activists have been booked and sent to jail. The case of our (PUCL) vice president, Dr. Binayak Sen, is well known, he is here and will share why the (Indian) State fears him and why the judiciary agreed to sentence him for life, using the law on sedition in a manner worse than the colonial rulers. Gandhi was sentenced to two years, Tilak eight under colonial rule, but Binayak was sentenced to life in Free India. The case of Seema Azad, organising secretary of PUCL, UP, who has been in jail for more than two years, shows similar tendencies. Merely on the basis of possessing literature and heresay the police have charge sheeted Seema. And further she has not been granted bail. Similar is the case of Ajay TG, PUCL vice president of Chhattisgarh, a film maker and sociologist by profession. Despite being out on statutory bail in August 2008, the Chhattisgarh police, instead of closing the case as it had no evidence, chargesheeted him after three years.

With a string of draconian laws, ranging from the Armed Forces Special Powers Act, 1958, to DIR, MISA, TADA, POTA, CSPSA to the Goonda Act, and the Unlawful Activities Prevention Act, 1967 (amended in 2004, 2008), it has become very easy to book people, make arrests and convict people as all these laws criminalise intent.

With a section of the judiciary only believing the police and not trying to see the circumstance and the evidence, it has become very easy to silence activists, by putting them

away in jail and then by creating a media hype against the person who has been booked, the entire community, including intellectuals are being silenced. People are living in fear of standing up for justice. If this is not State repression, then what is?

I think it is high time that we sat together and thought about whether we are going to allow this criminalisation of our legitimate acts, let the police and the intelligence take over the minds of our people, and let the judiciary become even more 'executive minded' than the executive itself.

Yesterday (18 November, 2011), a bench of our highest judiciary, the Supreme Court, struck down an earlier judgment which had declared unlawful the Salwa Judum and SPOs, a judgment which had previously raised the prestige of the Indian judiciary that we are all so proud of. Now it has modified its earlier order, saying the ban on appointment of SPOs would apply only to Chhattisgarh. What will happen to the 6,400 SPOs in Jharkhand and 8,000 SPOs in Orissa? We know that Chhattisgarh has no meaning for this order. It has already bypassed the SC order by converting the SPOs into a local battalion.

During the next two days, we must just share our experiences. In a frank manner, our sense of isolation, maybe a feeling of a sense of support or that of betrayal by fellow activists. We must talk very openly and really ask ourselves, what are we going to do? How many more of us are going to go to jail? One Binayak, one Ajay T.G. and so many others that we can see here, how many more do we want to send away? I do not want to think what is lost in anyway. We believe in the Indian State. We believe in the Constitution of India and, therefore, we believe that we can come up with a solution.

I think it is very clear that protection of human rights is dependent on the nature of governance and the kind of socio economic policies that any government pursues. So, basically, these are the two sides of the same coin. Therefore, when Henri says that you don't have to go by the name of human rights to do the work. It means that all of us become activists when we question any dimension of policy or any discharge of duty of the State apparatus. Thus, we are discharging the duties of a human right worker. We need to consider this in detail. Secondly, there are several mechanisms and organisations, along with those that are named, that are human rights organisations. The kind of associations of persons that all of us represent there is a very small part of the mechanism that even the State has tried to put together. like the various human rights institutions we have – the women's commission, the children's commission, the human rights commission and the other whole line of commissions, which in total are more than 18, if we only look nationally, and then all states have several commissions too.

Do we see any role for them? Is there any way that we can make them accountable? Or are we supposed to ignore them? Bear in mind that this is also a session on the threats to human rights defenders and human rights institutions. It is time we collectively exposed all national and state human rights institutions, including the women, Dalit, Tribal, minority, disability and other commissions. If we cannot make them effective and proactive, they might as well not be there, rather than be tools to further beat the human rights defenders.

I think we have got to understand that. The suppression of freedom that we have witnessed earlier is still happening in Manipur and other states of Northeast and Kashmir, along with a kind of targeting of the minority community. What needs to be focussed upon is to treat all violations and violated in an equal manner, and not just appear to build a hierarchy of violations and violated. For instance, the standard that we have set now, in order to get a person released from jail, is that of Dr. Binayak Sen.

We need to understand that the threat is all pervasive. It is a threat when you are involved in any small everyday engagement, of trying to protect human rights. If the threat exists there, then it also changes the whole situation. It's not just Kashmir or Manipur but all of India that is going to be like Kashmir and Manipur soon as we see the whole phenomenon of Chhattisgarisation that is already happening. We, therefore, need to be earnestly involved in discussing this issue and in coming up with firm ideas to tackle it.

**DR. BINAYAK SEN**
*Social Activist, Chhattisgarh*

***A situation resembling genocide is being created because genocide is not only about killing with bullets, but genocide is also about creating a situation by which the survival of a large part of a community is threatened. So, if we take that definition of genocide, we find a situation which is genocidal in large parts of the country.***

My sister Bibi Paramjeet Kaur and my friend Kavita asked me to talk about my story But I don't think my story is of overriding importance, I will refer to it in passing , as one of the examples in the host of others that I wish to bring before you I would like to start with the story of Jeeten Marandi from Jharkhand. We had a meeting on 12th November 2011, to talk about the case of Jeeten Marandi, who is sentenced to death and is in a Jharkhand prison on a totally concocted case. My own case is an example of the way in which the judicial system is dealing with efforts to highlight the problems of human rights.

Kavita talked about 'Chhattisgarisation' I am not entirely sure what she is talking about, although I can guess what she could be meaning I would like to talk a little bit about Chhattisgarh and draw parallels from Chhattisgarh to the rest of the situation in the country But let us start with Jeeten Marandi. He was of course unable to come to our meeting in Ranchi, from which many of us have returned. His wife, Aparna Marandi, a young girl, a very brave girl with a two and a half year old baby spoke to us having left her child suffering from cerebral malaria in the hospital to address/attend our meeting. What she told us about Jeeten's work as a cultural activist and public singer his trial for the murder of the son of Babulal Marandi, and his mindless conviction without any evidence, stung us to the core.

In Chhattisgarh, the Special Police Officers (SPOs) recruited and armed by the government have set in motion a reign of terror in south Bastar, with SPOs looting and burning villages, killing fellow tribals and raping women. Although the Supreme Court has recently ordered their disarmament, the state government has announced in public that they are going to employ exactly those same SPOs as regular police officers. The only

difference in their condition would be an increase in their salary of Rs 3000, which will now go up to Rs 8000. They will be let loose on the community with full state impunity. And all the other structures about the manner in which these vigilantes had been deployed, which the Supreme Court passed, all those other structures were to be ignored. An utterly cynical and defiant attitude towards the rule of law by the state government appears to be supported by the union government.

It is a matter of great sorrow that the situation in Chhattisgarh is being repeated in Jharkhand, is being repeated in West Bengal, is being repeated in so many places across the country.

There is today a situation of persistent, stable famine existing over large parts of the country. More than a third of the total population of the country is in a state of famine. This is shown by government data utilising anthropometric measures of nutritional status. On top of this situation, across the country we have a situation where the government stands guarantor in the process of displacement of these very people who are suffering from this stable famine. And all of the common property resources are taken over by the government under the doctrine of eminent domain; those resources are handed over to private interests, to corporate interests for them to use at will, what Justice Sudarshan Reddy identified as tax breaks for the rich and guns in the hands of the poor.

I come from Chhattisgarh. I had the privilege to work for a long time with a trade union leader called Shankar Guha Niyogi. Chhattisgarh has a long history of people resisting the State. In 1977, when 10,000 workers formed a trade union, police fired on a gathering of unarmed workers & twelve workers were killed. In 1984 again, three workers were killed in police firing. In 1992, when thousands of contract workers were sporting on the rail tracks in support of their demands for humane working conditions, sixteen workers were killed in police firing. In 1991, on 28th September, Shankar Guha Niyogi was himself assassinated by a contract killer hired by the Industrialist mafia. Fifteen days before this he had taken a delegation of representatives of Chhattisgarh Mukti Morcha to the President of India, Mr. R. Venkatraman. In the course of discussions, Shankar Guha Niyogi told the President that his life was at risk and that he was in danger of being killed. After he went back to Chhattisgarh, he was shot dead within 15 days while he was asleep in his bed.

I was remembering Shankar Guha Niyogi when we were hearing about the story of Jaswant Singh Khalra. Five hundred people were killed, 100 women were raped by Salwa Judum and so many people were arrested for no reason! Peoples' resistance to state brutality always brings forth this kind of response. False cases are registered against them and this pattern is being repeated over and over again in Chhattisgarh, Jharkhand, Kashmir, and in so many places, all across the country. We now have to think about this problem and what needs to be done. I am so very glad that we could all come together and try and think and plan about the kind of response we should make to this phenomenon that we see before us.

As far as the judiciary is concerned, I don't think anybody is suggesting that we all become cynical about the judiciary. I think that we have to have recourse to the judiciary,

we have to have recourse to the laws, but it is the State, which is adopting an extremely cynical attitude in its functioning towards the judiciary I think, that is something we need to highlight and bring before the people. For instance, the way in which the Salwa Judum judgement has been treated by the State is outrageous and it just surprises me that the sort of cynicism we saw in Chhattisgarh is being seemingly repeated in so many other situations In Bengal, Mamta Banerjee goes in a public meeting and says that Banduk Uthana Hai to Sarkari Banduk Uthao (If you want to pick up a gun, pick up on behalf of the State) This means that your basic validity of the militarisation of the situation remains unshaken

It is not my suggestion that we should be cynical about the judiciary but I think human rights workers are all over interested in proving the relevance of the judiciary to the problem that we face today

I have already mentioned about the stable famine that exists, the polarisation that is taking place more and more in this country today

Inequity is rapidly increasing in our society today The rich are becoming richer and the poorer are going into famine Assetless people are surviving because of their access to common property resources And these are the very people whose access to common property resources is being terminated. So we have to have some kind of debate about eminent domain, about what constitutes access to legitimate common property resources and how that access has to be legislated And, in such a situation, a situation resembling genocide is being created. Genocide is not only about killing with bullets, but genocide is also about creating a situation by which the survival of a large part of a community is threatened So, if we take that definition of genocide, we find a situation which is genocidal in large parts of the country This is something that needs to be realised and projected

**HENRI TIPHAGNE**
*Executive Director*
*People's Watch,*
*Madurai*

***Despite the presence of national level organisations such as NHRC, NCW, NC for SC & ST, and such institutions which are funded by the State, the status quo of the situations remains unaltered. It therefore, becomes a crucial role of human rights organisations to monitor these institutions at the various levels that they function in.***

My participation in this meet is particularly because of the same feeling of solidarity that one experiences being in the midst of people who have paid prices. Prices of different sorts, people have lost their beloved, have been forced into prisons, made to face a judiciary which is totally insensitive, people who are threatened, who continue to be threatened and in the process are attempted to be humiliated and disrespected for the works that they undertake and the stance they have made in life. My concern here will be with the role of human rights organisations.

I started my career in the year 1979 as an activist of the PUCL and was moved by some of the good works done by the PUCL. In 1993, an opportunity arose to be in Vienna at the Second World Conference on Human Rights. It provided us a completely different view of how human rights organisations were organising themselves in other countries of the world. There I realised that the State can be monitored and the State is indeed being monitored and made accountable in different parts of the world with a variety of experiences. It is in this background that we initiated our work, modeling our work on the vast global experience.

There are a large number of human rights organisations working in this country today. There is also a huge group which does not refer to itself as a particular organisation and it is them that need consideration. These are the human rights defenders. Many of those who are really championing for the cause of human rights in their own ways do not even use the word human rights in their day to day work. These people engage themselves in protecting, promoting and monitoring human rights in their effective locations. Thus, the role of a human rights organisation is not only to monitor, intervene, campaign and network but also to rehabilitate a variety of individuals, groups, sections of populations

who have suffered a variety of violations including civil and political as well as economic, cultural and political. That is, the work of a human rights organisation today is to subvert the State. By subversion, I do not mean achieving it through the struggle on streets only but subversion through our creative interventions. Their work is to ensure that the provisions, the policies, the stands of the State which lead to greater poverty of the country and marginalisation of the populations in this country are changed by the suggestions put forward by the human rights organisations of this country.

While we are looking at human rights organisations, it is important to publicly recognise that there are organisations working exclusively with communities, i.e., with children, women, dalits, adivasis, persons with disabilities, sexual minorities, people who are displaced etc. For the current discussion to be an informed one it is crucial that we emphasise repeatedly that these organisations are, more than often marginalised, and it should be finally acknowledged that these organisations, working on civil and political rights of the people, should be given their due recognition. Same goes to individuals working for fighting communalism. A good beginning towards defending the defenders will be to bring these under the umbrella of human rights organisations. It is also important for all of us to recognise national and international standards established by human rights organisations all over the world.

Another engaging issue in this regard is the human rights commission and the cloud of corruption that surrounds it. Despite the presence of national level organisations NHRC, NCW, NC for SC & ST, and such institutions which are funded by the state, the status quo of the situations remains unaltered. It, therefore, becomes a crucial role of human rights organisations to monitor these institutions at the various levels that they function in. In the states of Chhattisgarh and Orissa, when the State established institutions failed to protect the human rights of the people it was these organisations that played a key role and they still are. Also, another role that the organisations have to play is to monitor the state institutions according to global standards of protecting and promoting human rights. The work does not stop here, it is equally important for us to critically work with regional outfits, a variety of UN Organisations, HR Council and the treaty bodies.

Along with this, the most important and basic role of an organisation is not to forget the ground work. It is the role of human rights organisation to continue the day to day struggle on the streets. An organisation, after its growth and its engagement with larger political questions, should remain committed to engage, understand and believe in the variety of people who are involved in the task of making this country. This right to life, equality, freedom and dignity are more meaningful in the day to day life of the poorest of the poor. And, therefore, I think this juncture is important for us. The human rights platform must permeate itself to the roots of this country and which is owned by everyone. That is, a platform of human rights defenders which intends to protect ourselves only because we want to continue the struggles we are engaged in and continue the protection of rights of others.

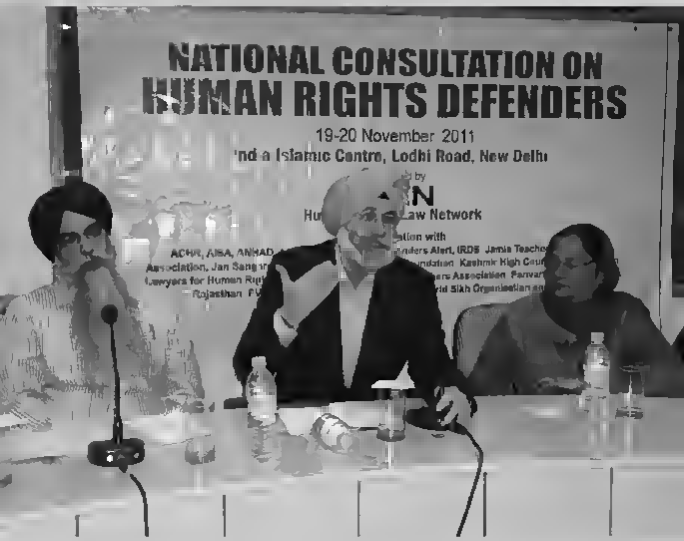
But the effective implementation of this platform has still not been effectively achieved. It has taken several years to remind the NHRC that they have to cater themselves to

human rights defenders. It was only in May 2010 that their focal point on human rights defenders was established and yet they are not willing to subject themselves to procedures, the process of criminalisation of human rights defenders. So, now it becomes our responsibility to correct this by continuous emphasis

Finally, a platform for human rights defenders essentially needs to remind the courts of this country that they can no longer continue to silence us by registering cases against us. While many of us are engaged in aforesaid court cases, it remains the duty of those outside these cases to expose the moving away of the judiciary from the core of rights discourse in this country. Therefore, it would be a huge achievement for all of us if we are able to get together and construct a national level platform where in those who were earlier denied the status of human rights defenders, like people who are engaged in labour issues, who are engaged in raising voices against the wages, who are fighting caste discrimination in different places, who are fighting manual scavenging in different places, who are continuing struggles in terms of fast for several years, or who are in jails facing charges against them. Finally, we should have an organisation that preserves them and speaks for their rights.

# Session 5

# SITUATION IN PUNJAB/'84 CARNAGE


NATIONAL CONSULTATION ON
HUMAN RIGHTS DEFENDERS
19-20 November 2011
Law Network

**ADV. H S PHOOLKA**
*Advocate, Supreme Court of India*

***We have to raise our voice and carry on the fight. One day or another we will succeed. Keeping the issue alive, telling it again and again is a success by itself. Though we have not succeeded in achieving the conviction of the political leaders involved in 1984 carnage, we have succeeded in ruining their political careers. They are recognised as mass murderers and committers of heinous crimes against humanity. At least we have succeeded in that and that is why we should continue to fight whatever may be the time gap, whatever may happen.***

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There are only two things that I would like to mention. First, there is absolutely no doubt that we need an organisation to work for human rights defenders. There is a dire necessity to start an organisation like this. The necessity arises because the government bodies that are responsible to protect human rights are not working properly. The human rights commission (HRC) fails to work in the manner that it should be working despite being an apex organisation in the field of preserving human rights. But, according to me, we should not take the human rights commission as defunct and create a parallel organisation. I think we should rather try and devise ways to make the HRC more effective. We should devise ways to put more pressure on the government so that it makes the necessary changes in the Act, amend the law and put the people who are more effective in powerful positions, people whose mindset is more oriented towards human rights instead of people who are sitting there for their own purposes. And, that should be the purpose of our organisation.

The other point is of handling the cases of the 1984 carnage in Delhi and parts of Punjab. I belong to the victim community and I know how difficult it is for the victims to follow up these cases. They are always labeled as anti nationals or terrorists. In 1984, when the congress had a two third majority, we still carried this fight forward in such hostile circumstances. We had planned to let other people speak for us. It was people like Justice Sikri and others, speaking for us in the front while we were in the background doing all the work on the field. That is how we managed to take this forward, without being jailed for TADA or something like that. I think this is a scheme that can be followed in other cases also.

That is, let the other human rights activists come and speak on behalf of the victim community and the victims themselves should be there in the background. I would request this organisation to probably have some kind of screening committee so that when we

are getting cases throughout India, we can determine that these are the cases of grave human rights violations and are needed to be taken up. Let the human rights activists, who are located there, pass on the information to this organisation and this organisation can protect those human rights activists/defenders, plus take up the case.

Many of us said that whenever we talk about human rights activism, we are labelled as anti nationals. If we bring forward people who are known to have a liberal view and persuade those people to take up the issues, it will have a huge impact on the media and also on the general public. For example, when Justice Sikri and Sorabji spoke for 1984 carnage, the people heard them and it made an impact. Secondly, whether we succeed or we do not succeed, it is immaterial. We have to raise our voice and carry on the fight. One day or another we will succeed. Keeping the issue alive, telling it again and again is a success by itself. Though we have not succeeded in achieving the conviction of the political leaders involved in 1984 carnage, we have succeeded in ruining their political careers. They are recognised as mass murderers and committers of heinous crimes against humanity. At least we have succeeded in that and that is why we should continue to fight whatever may be the time gap, whatever may happen.

These are few of the suggestions. I want to congratulate HRLN and WSO for these efforts. I congratulate all of you who have come forward from different parts of the country on a common platform to address the issue of human rights defenders.



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**ADV. R S BAINS**
*Senior Advocate*

***It needs to be re-emphasised that the ambush of human rights defenders by the State or the victimiser needs to be addressed as the key impediment in the establishment of a just society. The mutual network amongst defenders working in separate parts of the country can be further supported by raising public opinion about this much neglected issue.***

The moment one uses the phrase 'human rights', it immediately invokes an idea that one is going after some important person, some police officer, a rich man, or a criminal. Human rights, after all, does mean that one is standing by the victim and trying to help him/her. Therefore, once we try to corner these important people, at one stage or the other, these people turn around and show their criminal side. Say a police officer will ultimately threaten you with physical harm or a rich corrupt businessman will show you his mafia connections. In Punjab, since the case of Jaswant Singh Khalra, the open killings have decreased considerably. But still, whenever one has a witness to follow up on or any other important case, one has to face false implications in cases hordering around planting RDX or planting high explosives. Tragically, in law we have limited means to save these people and none to save ourselves.

Recently, a similar incident happened with an acquaintance of mine who has been active in this field for the last 15 years. I am personally grappling with the task of saving him. But there is little that can be done. He already got himself acquitted in fifteen serious cases. Yet again he finds himself accused in a RDX case. This time he has not surrendered. No other country is ready to give him asylum because the moment you are charged with a serious crime, you are a terrorist and a dangerous man. He also cannot approach other activists because the moment he does, they will be accused of sheltering a dangerous person. As such, a person in such a situation has no other choice but to surrender and accept torture, and spend time in jail for the next 5 to 10 years.

In the face of such serious, not to mention false, cases, the question to ponder over is how can an activist defend himself/herself? They can either leave the field or leave the state. A working proposal could be to maintain a network amongst defenders spread throughout the country, such that when one activist is facing heat in one part of the country, he can be moved to another safer location. The resources can either be generated or be drawn

out of the country This step is crucial because there is no way out otherwise. The only option is to surrender and suffer, much like the way Binayak Sen did

It needs to be re-emphasised that the ambush of human rights defenders by the State or the victimiser needs to be addressed as the key impediment in the establishment of a just society The mutual network amongst defenders working in separate parts of the country can be further supported by raising public opinion about this much neglected issue One effective way can be by carrying out private investigations and publishing a largely documented parallel report, deemed with authority, using witnesses Once both the reports, the police and the private one, are filed, both trials can run simultaneously There are, of course, problems with this approach too. It needs an abnormal amount of resources and witnesses, and families that refrain from succumbing to pressure However, the import of this approach lies in the fact that once measures like this are utilised by a particular group, it sets an example and it will not be wrong to say that it acts as a serious warning to the authorities We can thus hope for things to improve gradually

Another observation that I intend to make here is that when the State is not directly involved, the human rights defender can sometimes expect to gain some assistance by one or the other member of the concerned authority In my personal experience, not much has worked when it comes to open killings and false cases, other than what I have mentioned above The only strategies that I can opine are to strengthen the internal network and build our resources in such a manner that the person involved in the conflict can be kept away temporarily The person under threat often does not take these warnings seriously It is the committee around him that needs to jump into action This again implies that we need a stronger network, wherein, others are liable to take decisions on behalf and in support the threatened activists

This particular meet, that we all are a part of, should be utised to develop proper coordination to put this network into implementation We are a country with so many dimensions that one or the other strategy is certain to work provided the necessary talent and resources are put in It is an accepted fact that there is no lack of commitment to the cause but, at the risk of appearing repetitive, let all of us remember that coordination and networking are the keywords to make a strong defence system for activists to become operational



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**ADV. SATNAM SINGH**

***If this is a country that respects the rule of law and the rights of its citizens and follows the Constitution, then it has nothing to fear in repealing the Armed Forces Special Powers Act, 1958. The police officer is no different than the street vendor or army official. If every one is equal before the eyes of the law, let the law test and judge who is responsible for acting outside the law***

Let me begin by commending the great victory that has been achieved, after a sixteen year long struggle, in the case of Jaswant Singh Khalra and the convictions of some of the police officers responsible. The sacrifice which Sardar Khalra made is particularly important for the legacy of human rights in Punjab, as it was the only way that the true horror of what took place in Punjab during 1984 to 1995, could be conveyed and demonstrated to India and the international community. It is extremely ironic that the sacrifice of a life is the only means to show the world that in those dark days a Punjab police officer can knock at the door of a house at 2 o'clock in the morning, forcibly abduct and take your son away, not to the police station but to some illegal detention centre, torture and interrogate him for 4-5 days, have his hands tied behind his back and kill him at point blank range, and later duped as a police encounter. Earlier nobody could understand or even believe what was happening. Sardar Khalra dedicated his life, which met a torturous end, just to convey this true situation of Punjab.

In 2007, while working on human rights documentation, we travelled around the country. We went to the states of Chhattisgarh, Tamil Nadu, Andhra Pradesh, Punjab and also had the opportunity of interacting with the victims of Kashmir. What was realised from this experience was that Punjab a crucible for a tried and tested theory: when there are troublesome minorities that the state regards as "subversive" or " anti national " the best

way to quell them is to harass, torture and kill them. Sadly, year after year, struggle after struggle, people after people, the same atrocities are being mirrored all across India and very little seems to be done about it. Chhattisgarh had appointed KPS Gill as a security advisor to help "tackle" the Naxlites in 2006. The fact that this person, a known perpetrator of such violation in Punjab, is being courted by state positions, instead of being charged with offences shows the country the situation we are all in. During my practice in London I have not experienced anywhere near the kind of difficulties that activists, lawyers and social groups face in this country.

Today if one looks outside India, the general perception is that India is a vibrant democracy, with an adherence to the rule of law and respect for the rights of its citizens. The litmus test often applied is by looking at Indian standards in comparison with India's neighbours, Pakistan, China and Burma, India is better off compared to its neighbours or regional powers in Southeast Asia. India indeed, has a comparatively better record, but the international community and media need to attend events like this. If this is a country that respects the rule of law, the rights of its citizens and follows the Constitution, then it has nothing to fear in repealing the Armed Forces Special Powers Act, 1958. The police officer is no different to the street vendor or army official. If every one is equal before the eyes of the law, let the law test and judge who is responsible for acting outside the law.

There was a question asked by one of our younger friends earlier that "are not you human rights activists regarded as acting outside the law?" Well, we condemn any one who acts outside the law. As lawyers we act within the permits of the law that give us certain rights. Our argument is everybody must act within the permits of the law. Whether it is a police officer or an army officer or personnel, neither should be able to act with blanket community. Unfortunately, the situation in the world is not much better. It is just perhaps camouflaged in a better way. Look at Sri Lanka. 50 000 Tamils were slaughtered in the LTTE dominated areas in the final stages of the conflict. The UNHRC has said there needs to be an urgent UN led independent inquiry into what has happened in Sri Lanka. Is there any political will amongst any of the nations internationally to implement such an independent UN Commission?

In the late 90's the Punjab human rights activists tried valiantly to try establish a People's Commission, to examine these violations – led by retired Judges. This attempt was scuppered following the intervention of the Punjab and Haryana High Court. Unfortunately, the mechanisms that are supposed to internationally protect all people, are lacking. After everything that happened in Sri Lanka, where all is well known and documented and the collective will of UN could demand an independent inquiry in Sri Lanka, it did not take place. I m afraid, that the hope that we would have done something for Punjab, Kashmir or all the conflict states looks all the more forlorn. If these conflict states contained oil or if they were strategically important to the western countries, maybe the dynamics would change as they have in the Arab countries.

We will be discussing what can be done. We should take hope from these events, both national and international, as it was quite correctly noted by Henri that when facts are documented they become a database. Recording and preserving our history is one of



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the things that we as a community, the Sikh community, must learn. Sikhs are known for making history but have not afforded so much time in recording their history. Now is the time to record history. If nothing else, some of the lessons of what happened in Punjab and in other places can be learnt.

Documentation is very important. Whether or not the courts or the judiciary listens, acts, or implements, its important that future generations should know how these people, in their hundreds and thousands, have suffered terribly in the modern history of India. For those who are involved in academic work, not necessarily lawyers, it is important to go to these areas and document this history. When we came back to India in 2009, we spoke to our friends and colleagues here. The litigation which I will refer to as the "Khalra cases" where evidence of 2097 killings and secret cremations were uncovered. The NHRC judgements in this case were a depressing read. When victims and activists tried to say in a strong voice that this was not confined to just three cremation grounds and that it happened throughout Punjab, it fell on deaf ears. The judiciary dismissed a wider enquiry contending that it was "talk in the wind" and that there was no evidence. Thus a lifetime of work, that affected more than 25,000 victims, just disappeared and evaporated into thin air.

We undertook a very small and humble project - and I am not going to pretend that we achieved such great figures or made a huge impact. We travelled to Gurudaspur which borders Amritsar to see that if we could establish a pattern to show that all was not just "talk in the wind". Gurudaspur was the mirror image of what happened in Amritsar. We were told that we were going to face all sorts of reactions from people, some of bitterness, some of anger, some of too little, too late and we did come across all of these reactions. But there was also a resolve among the people, those who were disproportionately affected by these events. The people of Punjab are very stoic. As a border state they suffered, disproportionately, perhaps more than any other state now settled in India. The horrors of partition, having to leave home, lands and villages in Pakistan during partition, suffering from unspeakable atrocities during that time. There has been a traditional hostility by the central government towards the border people. They are seen as the subversive smuggler types. The investment and infrastructure there is very poor as the industries were lost during the partition period. During independence period, these people suffered twice in 1947 and after 1984, they became soft targets and easy prey. Their suffering knew no bounds. We understood from the documentation work that illiteracy, not understanding their rights was borne out of the abject poverty when the main bread winner is killed or disappeared by the police. Punjab is regarded as one of the most affluent states in India. The area I originally hail from has a huge NRI diaspora. Its a tale of two Punjabs. Travel to the worst affects parts of State violence - Amritsar, Gurdaspur, Firozpur and there are people living as they have done since the past 20-25 years.

I just wanted to share some of these things. Also, I want to reiterate the significance of having access to media, digital recording equipment and so many other ways of documenting human rights violations in a digital age. It is important that victims' testimonies are recorded in places like Chhattisgarh and Jharkhand. All the horror stories that we

have hoard, and will continue to hear, should be recorded. Eventually, one day, it can ho presented to the whole nation to say that this happened to our own people. To show that though it was believed for so long that these so called "anti nationals" were smuggled over from Pakistan, that they are "agents" of the "enemy county", our findings show that there was not a single porson who was killed who was not born and brought up in Punjab. It is important that we share experiences, we documont history, and wo go away from this with all the useful suggestions that are decided as strategies, whether it is litigation or even just making the media understand.

The other important aspect is that the outside world needs to understand what is happening in India. There is a two tier India. There is this other side where the world at this moment considers India to be developing from strength to strength, that would change the dynamics of the world. Then there is conflict going on here which all of you understand much better than I do. The world needs to understand it and hear it.



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**ADV. NAVKIRAN SINGH**

***Lawyers know how to defend themselves and do not really need defenders but what about the people who are not trained in law? Unless a system is formed where we are able to exchange the problems we are facing and we are able to help each other, nothing is going to change.***

The organisation I represent here is Lawyers for Human Rights International. This organisation came into existence when we lost four of our lawyer colleagues who were killed by the Punjab police. All that those lawyers were doing was handling human rights cases; one of them was killed along with his wife and a three-and-half-year-old child. When we realised that this is the situation and that we need to protect ourselves from this potential threat, we formed this organisation. Once this organisation took shape, not only were we able to stop the killings but we were also able to secure justice for the lawyer families and get those police officials behind bars and get the victimised families compensated. Thereafter, we took up the work of protecting the rights of the individuals, and now this organisation has been working for more than 15 years. Primarily we take up cases on behalf of people who are very poor, and who cannot access the courts, and provide them with free legal aid. We also file PIL & get matters marked to the CBI.

Recently we took up a matter wherein a Punjab police DSP, who was dismissed and was a proclaimed offender in three cases, was openly living in a city of Punjab and was running a sex racket along with his two sons. When it came to our notice about two months ago, we filed a PIL and were able to get the matter forwarded to the CBI. Hopefully, the DSP would be arrested and his sons would be behind bars too. We have been doing this work on our own in this manner and the most wonderful part of the story is that we are not funded by anyone. We have not accepted any funds, nationally or internationally, till today. We do not have a bank account and we do not need any funds because we are lawyers and we are able to serve people through our profession. That is the beauty of it. I think if we can formulate something in order to defend ourselves, it can be really fruitful.

Whenever we have met the defenders, I have always pointed out that we must co-ordinate and formulate a strategy. But even after late night meetings and consultations

nothing could ultimately be figured out. I am quite fed up with these consultations. Although some may not know the cases that we are discussing, they are well known to most of us. But does that make a difference? Until and unless we are able to have a platform where we can exchange views and we can help the defenders, if one of the defenders is in trouble, it is useless to have any consultation. That is my personal view and may not be the perspective of the people who have organised this meeting. I told Colin that before this meeting ends, there must be a system. We have had these consultations quite often. Twice a year we meet somewhere and exchange views but where are we leading ourselves? Lawyers know how to defend themselves and do not really need defenders, but what about the people who are not trained in law? Unless a system is formed where we are able to exchange the problems we are facing and we are able to help each other, nothing is going to change.

Personally, as a human rights lawyer I have faced police officials twice in my life. The first was in 1991, when I was taking one of my clients who was acquitted from the court. The police wanted to take him in because at that time whenever a Sikh youth was acquitted he was again abducted by the police and killed in a false encounter. We wanted to stop that. So, the lawyers and journalists came together. It was a day when a young boy was to be acquitted, so it was decided that he would be seated in a car and driven away and the rest would be taken care of. I was a younger person in 1991. I made him sit in my car and the police came in front of me. In youth, you do not see what you do. So I hit them and I ran away with my car. They started shooting from behind and both of us barely survived. Another lawyer's car was hit and the bullet hit the back glass and came through the front glass. Although it was a vacant car, the person could not ride that car again. I ran away with the boy and was able to save his life.

And the second time was recently when we were prosecuting a police officer who had killed hundreds of young men and he openly claimed this while having drinks at parties. He claimed that he had killed 400 Sikh youth with his own hands. The fact was so atrocious that we decided we would ensure that he does not stay in service, and is charged for his offence. When we filed a PIL against him, he sent a person in the high court premises who assaulted me. This was in 2006. The man who assaulted me wanted me to beat him up in front of the other lawyers and he already had a story made and even brought some journalists with him. The police had managed the journalists. He, however, did not succeed and the judiciary was good enough to file a complaint in the registrar office. The chief justice himself said that I was not alone and that they all were with me. So it is not that the system does not work. We have to see that we do not cross any lines ourselves. We need to be focussed and need to ensure that our ideas are manifested despite facing threats and hurdles.



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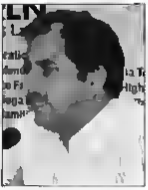
# Session 6

# DEFENDERS IN KASHMIR



**IFTIKHAR GILANI**
*Journalist*

***Why do the same national media, the NCPCR or such institutions not take cognisance of these cases in Kashmir is beyond anyone's comprehension? Why Kashmir fails to get any institutional support? We need to go beyond this seminar to look for answers to these questions?***

When I was arrested under Official Secrets Act (OSA) in 2002, one MP raised a question in the Parliament and wanted to know the circumstances and the cause that led to my arrest. After explaining its version, the government finally concluded that the journalist was arrested keeping in view the "national interest." After eight months, when the government finally realised its blunder, thanks to a sustained campaign by friends in media and within political class, and released me after eight months of incarceration, again a question was raised in the Parliament. Some MP wanted to know the reasons behind my release. A terse reply from the Ministry of Home Affairs was, "the journalist was released in the public interest." It may seem very comical. But the fact is that the gulf between the national interest, as perceived by the security agencies and governments, and the public interest is widening.

Keeping the larger political dispute aside, whenever elections in Kashmir are held, the participation of people in these elections is celebrated in New Delhi as a "festival of democracy." But the irony is that when the political parties, whether it is the National Conference (NC) or the Peoples Democratic Party (PDP), come to power and try to implement their manifestos, the same forces, who celebrate their coming to power, turn against them. During its election campaign, the NC had promised to withdraw draconian Armed Forces Special Powers Act (AFSPA). The PDP had called for demilitrisation of civilian areas.

One of the senior army officers was pleading that if AFSPA was lifted from central Budgam district, it would affect army's movements and supplies to Kargil. It was also argued that if the law was revoked, Kashmir would get independence by 2016. In fact, they want to believe that Kashmir is with India only because of army. There are 62 battalions of Rashtriya Rifles, three infantry brigades devoted for the counter insurgency

operations, and in addition there are 55,000 CRPF personnel Additionally, almost eve ry police officer of Jammu & Kashmir Police is engaged in counter insurgency duties With such a large number of troops placed in Kashmir, they do not have courage to lift AFSPA And even if the mainstream political parties, who are known in Kashmir as a face of India, want to do so, they can not The State does not allow them to implement their manifestos

Media is an important tool in the hands of human rights defenders. In fact, media itself is duty bound to highlight human rights abuses and the work of civil rights defenders But media has been selective in lending a helping hand when it comes to human rights defenders as the past experience shows

One of the classic cases is that of Mr Maqbool Sahil I was somehow indirectly involved in his case as a reporter, as also because I was interested in this case as it was related to OSA On the day he was arrested, a team of top Pakistani journalists under the aegis of the South Asia Free Media Association (SAFMA) were touring Srinagar

At the *Kashmir Times* office, I saw a press release issued by some counter insurgency unit of Jammu and Kashmir Police, mentioning the arrest of a journalist involved in taking aerial photographs and sending those to the ISI across the border Newspapers in Srina gar pointed out discrepancies in the press release and decided not to publish unless these were addressed If the arrested journalist had taken some aerial photographs, somebody must have lent him a helicopter and that needed to be clarified Only one newspaper published form Jammu published this press release

Once I was back in Delhi, I alongwith a senior colleague of *Indian Express* confronted the then Chief Minister Mr Mufti Mohd Sayeed, who had come to attend the plan ning commission meeting. He promised to get details and also that he would ask the director general of police to get in touch with us. He did so and also advised us "in the interest of safety and early release of Sahil," not to raise hackles He even said that the case belonged to army which had not handed over any material against Shail to Police thill then He futher said that if the case was highlighted unnecessarily, there was pos sibility of some State agency manufacturing evidence against him After three months, prosecution could not file a chargesheet against Shail In any other state Shahil would been granted bail, but, instead of releasing him he was booked under the Public Safety Act (PSA) and this preventive detention was repeated and recycled for almost three and a half years The Jammu & Kashmir High Court quashed his detention three or four times but got no relief

Similarly, in 1990s, Punjab regiment stationed at Sopore picked up some boys to do some construction works in the newly set up camp at degree college hostel One of the boys, who had recently got an appointment as a government teacher, refused to work as a labourer A soldier thrashed him and fractured his arm Next day all boys were handed over to their parents, but the officer incharge refused to release this boy, arguing the mili tary doctor was curing his fractured arm and that he would be released after he recovered from injury

But to his misfortune, a brigadier was touring the area He took strong objection to the



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presence of a civilian in the army camp and took this injured boy with him. When his parents came to enquire about him, they were told to look for him in Baramullah. In Baramullah they were told to enquire in Srinagar.

After six months, they got a post card from the Udhampur Jail. They came to know that their son was in the jail booked under the PSA. The parents approached court which, after taking some six months quashed the detention. But, instead of releasing him, another case under PSA was slapped against him. This was recycled and repeated for over seven years. Meanwhile, his parents died. The only answer from police was that this boy had been handed over to them by the army and, therefore, unless they got a signal from the army, they wouldn't let him go.

Coming to the media, you have seen what happened to the freedom of the media in Kashmir in 2008 and 2010. In the face of curbs put on media freedom, they don't have any institutional support from anywhere. That is a case in point in itself. In 2008, with great difficulties we managed to get a lame statement from the Editors' Guild, that too after knocking the door of each and every editor. In 2010, it was almost a similar case. The newspapers ceased their publications.

There was nobody to take cognisance. The press council very reluctantly admitted the case and issued some notices. Once I asked a former chairman of the press council as to why were they so reluctant in taking up the cases? He said that it was a conflict zone, and that these things happened everywhere in conflict zones. Just days before, there was a press council meeting, where this issue was brought up and the chief minister had given a detailed reply as to why the freedom of the press was curbed last year; why some media organisations had to cease their publications. They said that now that a reply had been given, we should accept it and close the case.

The same press council, when in a similar situation in some other parts of the country 3-4 years back, went to the capital of that state and stationed there for a week. They summoned the chief secretary and the DGP of that state. As the Press Council of India had come to the state capital it was an encouragement for the local media. They actually got to know that they were part of a system. Only recently I read in a newspaper that the National Commission for Protection of Child Rights (NCPCR) has taken a suo moto case of a Sainik School in Jhumri Talaiya of Jharkhand, where some ragging was going on against some minors. The NCPCR took suo moto action and issued notices to the principal of Sainik School and even summoned him to Delhi. But I fail to understand why the same NCPCR ignored the report of the Asian Centre for Human Rights on the issue of how the juveniles were being treated in Kashmir. The heart rendering photographs, where the minors were being picked up and escorted handcuffed to the examinations centres. Why do the same national media, the NCPCR or such institutions not take cognisance of these cases in Kashmir is beyond anyone's comprehension? Why Kashmir fails to get any institutional support? We need to go beyond this seminar to look for answers to these questions?

**SANJAY KAK**
*Independent Documentary Film Maker*

***But the real worrying thing, if one sees what is happening in recent years, is that while the situation is described as improving, they are actually tightening controls on the media in Kashmir and I refer here specifically to the local media. This has made it more and more difficult for the work of human rights because after all human rights defenders are only a tiny minority and their work gets a certain kind of sustenance only from exposure in the media.***

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I am here as a film-maker, and don't really come here with any real authority, except that people who are described as human rights defenders are those from whom one learns, continuously, and for whom one has a great deal of respect. I am also not going to try to speak with any authority on the situation of the human rights defenders in Kashmir but I do want to make a few comments, which is basically from the standpoint of how I see the situation in Kashmir from Delhi. Mine is the view from Delhi as a Kashmiri.

I think that the situation of people who work in the area of human rights in Kashmir is always quite symbolic of the wider situation – and that wider situation in Kashmir is shaped by a very particular political situation. In some sense this is what distinguishes the situation of human rights defenders in Kashmir from those in other parts of the country. There has been a conversation about AFSPA (Armed Forces Special Power Act) last year both in the context of Manipur and Kashmir and of course it is visibly a very draconian law, and draws attention to itself by the power it gives non commissioned officers, the authority to shoot and to kill. In Kashmir what is probably much more significant is the Public Safety Act that is used to imprison, and continuously intimidate and harass all kinds of people, particularly those who might be described as human rights defenders.

One of the problems is that those who are described as human rights defenders in Kashmir have always been isolated from the wider community of people who work in human rights in the Indian sub continent and that has something to do with the political nature of the demands there. Because that always complicates things. I think we had this conversation some months ago, when the possibility of AFSPA being applied in Chhattisgarh (Central India) first came up, and there was this chorus, "we cannot use AFSPA against our own people." People have remarked upon this, that it clearly implies that the people in Manipur, Nagaland and in Kashmir were never regarded as our own people.

This may not be such a disappointment to people in Kashmir since many of them don't regard themselves as Indians anyway!

But the real worrying thing, if one sees what is happening in recent years, is that while the situation is described as improving, they are actually tightening controls on the media in Kashmir and I refer here specifically to the local media. This has made it more and more difficult for the work of human rights because after all human rights defenders are only a tiny minority and their work gets a certain kind of sustenance only from exposure in the media. Over the last couple of hours that I have been listening here, its quite obvious that there is a growing reluctance of the media to actually engage with issues of human rights. Sometimes I think that the partial attention that the media gives in Kashmir, is not because of laziness or reluctance, it is because there is a great deal of pressure on the local media to ignore certain kinds of reporting.

It is almost impossible to look at what is happening with human rights in Kashmir in isolation, like it is impossible to look at human rights in isolation in Chhattisgarh or in Jharkhand or in any other part. It is just that the contexts are different. So, I think it is very important to keep in mind that there is a particular political situation that awaits resolution in Kashmir, and that the issue of human rights in Kashmir is intricately tied in with that political solution.

The whole ranges of illegal laws are used with such impunity and have been so used with impunity for twenty years whereby PSA orders are issued even when the charges are not of a serious nature. The fact that you harbor separatist sentiments in itself is considered a serious enough charge to put you away for six months. I know of someone who has spent the last one and a half years under PSA in jail for inciting people on Facebook, and for organising a seminar. Therefore, I think it is important to take away the fig leaf of legality from these laws, which basically allow the police to just pick up anybody and put them away.

We are not just looking at human rights violations when we talk about Kashmir, but we are talking about a systemic abuse, which applies to everything, whether it is the use of law, the judiciary or the manipulation of the media. I think the important point to draw from the experience of Kashmir is how much of what we see as human rights violations is actually constructed into the system of governance of Kashmir.

**PARVEENA AHANGAR**
*Founder APDP, Srinagar*

***It has been 21 years and I am still fighting to know the whereabouts of my son. I do not need a job, neither do I need money; I just need my child back. The situation in Kashmir is such that almost everybody has a missing report and an FIR filed for someone or the other.***

Since 1990s my son has been missing. In 1994, I formed an association (Association of Parents of Disappeared Persons or APDP) and filed a case in the high court for *habeas corpus*. The lawyers there were fighting the case for free. Since 1997 my file is pending.

It seems that there are laws binding the civilians in Kashmir, but there are no laws whatsoever governing the security forces. It has been 21 years and I am still fighting to know the whereabouts of my son. I do not need a job, neither do I need money; I just need my child back. The situation in Kashmir is such that almost everybody has a missing report and an FIR filed for someone or the other. In these 21 years, I have been to every village and district in the state and we have collectively decided to fight for justice along with other victims.

Around 15-30 victims from these villages and districts took an initiative with me and we organised many meetings in my house. This went on for about three to four years. Afterwards, these victims lost the will to fight maintaining that there was no use of fighting as there was nobody to listen to their woes.

Afterwards, they decided to hold meetings in parks in groups every 25 days. Then I started holding rallies and hunger strikes for the cause. On one such occasion around 30 women, including myself, were put in jail and detained till evening. The order was passed in the court but the judge presiding over the matter retired and then I went to the state home office. After not receiving any positive response from there I went to the high court but the high court also did not do anything.

We were offered one lakh rupees in the form of compensation but what would I do with that money. I did not want money, I wanted justice. I took a picture of my child along

with me and went to plead in front of them. I promised Allah that unless I get my child back, I will continue fighting.

Today, mass graves are a common issue in Kashmir. Every district has a mass grave. Security forces pick up kids now and then and some of these kids have disappear forever. We demand justice and want the government and the authorities to look for our kids and find them. Our missing children are the responsibility of the government since they were the ones who had taken them away without giving us any reason for their action.

The security forces do not appear in the court and then they claim that the case is one-sided. I have fought for 21 years for my child. If my child has been picked up by the security agencies, then I demand that they should get him to the court and the court will declare whether he is guilty or not.

I will die, but I will not be scared. The media has been very cooperative but the bottom line is that my child is not back yet. We would not be in control of our situation unless we find a solution to our problem. I am not alone, many people are with me.

**G N SHAHEEN**
*Advocate, J&K High Court*

***The president of the bar association, Miyan Abdul Qayoom, was detained on the 7th of July, 2010 and I was picked up by the forces on the 17th July, 2010... I think we have created history in the sense that for the first time the president of the bar association and the secretary of the bar association of the high court are imprisoned and detained ruthlessly in violation of a court order.***

I am a lawyer and the Secretary General of the Jammu & Kashmir High Court Bar Association for the past five years. I am personally a victim of human rights violations for defending the victims. I have personally dealt with more than 10,000 *habeas corpus* petitions in the Jammu & Kashmir High Court along with thousands of matters of appeals. I and a colleague, who works with me, were detained last year under the provisions of the Public Safety Act (PSA).

The president of the bar association, Miyan Abdul Qayoom, was detained on the 7th of July, 2010 and I was picked up by the forces on the 17th July, 2010. I was taken from Srinagar to a faraway place near Rajouri, 450 km away from my home. I was in custody there for two months. The Jammu & Kashmir High Court quashed my detention orders directing the force to let me free, but authorities detained me again on other grounds under the provisions of the PSA. We were put behind bars where convicts for the offences under the Section 376 of IPC were also kept.

The third detention order was imposed upon me and I was again shifted from Srinagar to Jammu which is 300 km from my home. There, I suffered for another three months, so the total detention period was more than nine months in the year 2010. I started with this background because I feel it is pertinent to say that once you try to become wise of the wisest, you have to suffer, but as a human being, as a conscientious citizen of Jammu & Kashmir, we have chosen to act on behalf of the voiceless, whatever the consequences.

Every human rights situation has a background to it, so Kashmir too has to be taken in that perspective. Human rights violations have become such a huge norm in Jammu & Kashmir that I would describe it as hell on fire because of the gravity and magnitude of these violations. The question arises, Why? I personally feel that it is a political thought

across the globe and a hard reality accepted at the international level that Kashmir is a zone of conflict. It is a dispute between India and Pakistan in which India has fought three wars and the nuclear clash cannot be ruled out.

Bill Clinton, in a statement in Delhi, said that India and Pakistan are two hostile enemies, hostile states, and any miscalculation can lead to any nuclear clash in the sub-continent because of the differences on Kashmir. Both the countries tend to claim at international platforms that both are addressing all the bilateral issues including that of Jammu & Kashmir. However, non-addressal and non-hearing of the people of Jammu & Kashmir in this dispute resolution mechanism has given rise to the cause for the people to agitate. I do not feel ashamed of being part of a society which claims freedom, which claims the dispensation of the dispute in accordance with the aspirations of the people, preferably in accordance with the United Nations resolutions of 13th January, 1949, along with resolutions of 5th January 1949, and 13th August 1948.

Kashmir is a dispute and it is important to acknowledge and accept this fact. On 6th November, 1947 six lakh people had left Kashmir. This thing is not known to people in other Indian states because on 6th November 1947 there was an organised state level genocide in which tens of thousands of Muslims from Jammu & Kashmir region were massacred at the railway stations. In 1947, the dawn of freedom was celebrated in the subcontinent, but we were pushed into further darkness and personally we feel that there is no end to this dark channel. We have suffered a lot in history in terms of human resources, in terms of economic well being and in terms of social values.

Due to armed conflict during the past 20 years, the army is fighting against the militancy. India is not readily agreeing to resolve the dispute with Kashmir but we Kashmiris are a conscientious class of the society. We believe that all disputes need to be resolved on the basis of human values and democratic law. In the past 20 years, I have taken no gun in my hand, neither have I touched a gun because as a lawyer I know the implications of touching a gun. I have acted as a lawyer since 1985 and I have contributed towards serving the people. In Kashmir, the human rights violations are marked by random and extrajudicial killings. We are witnessing this phenomenon since 1990s. Secondly, people are arrested and then they disappear in custody and we are clueless as to where have they gone.

Parveena's son Javed was picked up in 1990 by special operation group forces and he disappeared from their custody. She has been crying for justice since then. She wants one glimpse of her son just to know for sure if he is dead or alive. Almost 57 mass graves are being identified in Kupwara and Madhipura districts alone, and that is through the human rights commission of Jammu & Kashmir. The international efforts forced them to act and they have discovered more than 2753 mass graves. We are certain that there are unidentified and unmarked graves where our sons, daughters and fathers are buried. Approximately 10,000 people are missing since 1990. Arbitrary and random arrests are another aspect of the problem.

I think we have created history in the sense that for the first time the president of the bar association and the secretary of the bar association of the high court are imprisoned, detained ruthlessly in violation of a court order. So, it is the first time in the world history of lawyers. Also, there is another aspect to the problem I witnessed last week. Around 10



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persons were brought for remand, among them five below the age of 10 years. The police used the explanation of hardcore student rioting. A third class student and a ninth class student were present. Under the Juvenile Justice Act, when such a boy comes to your court, you have to hand him to his parents on bail, ask them for surety, or get a bond signed by his parents. But these juveniles were kept in police custody. Such is the plight of the people in Kashmir.

Last year, in the aftermath of the past years, we have faced a lot of trouble. Thousands and thousands of boys have been picked up, incorporated in police stations. The gravity and magnitude of these violations can be determined by the presence of the forces. We have estimated that more than half a million armed forces are stationed in Jammu & Kashmir. Then, there are para military forces like Border Security Force, Central Industrial Security Force, the Indo-Tibetan Force, Central Reserve Police Force. The state government has created its own machinery. The director general of police has estimated the strength of our forces which is about 80 to 90,000 personnel. So you can imagine the condition we are living in.

Now, the State is perpetuating the crimes by denying people their basic civil rights. What the Indian State is trying to do in Jammu & Kashmir is denying these rights to citizens by enforcing Armed Forces Special Power Act, Disturbed Areas Act, Public Safety Act and other such draconian security laws under which people are detained without trials. Then we have Criminal Law Amendment Act also. If the court convicts anyone then we have no right to appeal before any other court, but we do have the right to appeal before the government. Another law is what we call the Enemy Agent's Act. Likewise, we have dozens of laws which try to legitimise the human rights abuses, extrajudicial killings, random arrests and sexual abuse. What I personally feel is that the current situation is at its worst in Jammu & Kashmir. It is worse than Palestine and Sri Lanka. We are a land locked state and have no access to the outside world because the government is coming down heavily on the people.

In every state you will find a boom of media exposure and electronic channels. But in Jammu & Kashmir, the private channels only display films that are usually made by the likes of Sanjay Kak. These channels do not broadcast any news. The print media is heavily attacked and we have lost dozens of journalists. So, we have no access to the outside world. The Indian electronic and print media is an asset to human value. Kashmir deserves coverage in media because it's the duty of the media to upgrade its people with better and proper information.

As a lawyer in Jammu & Kashmir, I feel that we have problems as human rights defenders. Along the way we have lost dozens of lawyers who were working as human rights lawyers because they were targeted and killed. We believe that even under occupation, the occupational authorities are under legal obligations to give some kind of legal protection to their subjects. We have a legal system in Jammu & Kashmir, we went to use it and we have used it, and sometimes we have succeeded and sometimes we have failed, and yet we are proud of it.

By and large the judiciary has acted positively, barring a few exceptions. But since there is no cooperation from the state authorities in implementing the court orders and direc



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tions, the efforts are made redundant because of non cooperation and non acceptance by executive authorities and police officials.

As a lawyer, I feel that in Jammu & Kashmir there is neither supremacy of the courts nor the supremacy of the law which is cherished so much under constitutional law. There is only supremacy of authorities. The government has constituted screening committees at district level, at divisional level, and at state level involving only police officials, concerned district magistrates and other officials from security agencies. The court passes orders and these orders from high courts go to screening committees and these committees review these orders and decide whether we should act upon these or not.

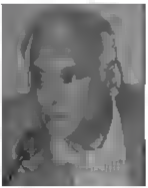
I have reasons to feel that no conferences or consultations are going to change the situation in India unless someone like Martin Luther King or Anna Hazare come on streets which can influence political decision making. Unless, there is political control over human rights violations, unless human rights movements are allowed, unless decision making takes these factors into consideration, I do not think that there would be any improvement in the human rights situation in Jammu and Kashmir.

We have to create a strong public opinion against human rights abuses, whether it is done by the State or by non-state actors.

In order to improve the human rights situation in Jammu & Kashmir, the minimum we demand is the removal of AFSPA, to begin with. This will lead to improvement in human rights situation because all human rights abuses are legitimised under this Act. Similarly violations are legitimised under the Public Safety Act under which the detention is prolonged without trial and hearing. These laws should be repealed so that there is some amount of consolation. In the larger interests of humanity, peace, security and development in the subcontinent, the resolution of the disputes which have a dangerous potential for disturbing people, deserve to be addressed. The issue of Jammu & Kashmir also needs to be addressed.

# Session 7

# ATTACKS ON ANTI-COMMUNAL ACTIVISTS



**ADV. MUKUL SINHA**
*Advocate, Gujarat High Court*

***One thing necessary to be pointed out when it comes to communal violence is that the defenders from the minority community are almost missing in most of the cases. Primarily because the victimisation of the defenders is the most acute when the minority is under attack***

Communalism is one of the most important issues that is plaguing the country today and we have to understand that it is quite different from other types of violations perpetrated by the State. Communalism and communal attacks actually engulf the entire society unlike class conflicts. In class conflicts, parts of the society, sections of the society will get involved but when it comes to communal conflicts, not only the State, but if it is between the majority and the minority the entire majority gets involved and that makes things very difficult. We are here all talking about defenders but there are moments when the minorities are under attack by the majority and the entire State is manned by the majority community, there are no defenders and the entire minority community is overwhelmed. This situation has been increasingly observed in certain states over the last few years. The worst scenario is when a party that claims to have a national presence and has held national office, indulges in communal violence. Gujarat is one such state where we have seen this in practice.

One thing necessary to be pointed out when it comes to communal violence is that the defenders from the minority community are almost missing in most of the cases. Primarily because the victimisation of the defenders is the most acute when the minority is under attack. I will give you a small example of what we saw in Gujarat. On 15th March 2002, about a couple of weeks after the massacre had taken place in Gujarat and the minority community were totally devastated and paralysed, certain Muslim advocates were trying to organise themselves to try to argue some kind of legal defence. They had called Mr. Majid Memon and film maker Mahesh Bhatt to a hotel in Ahmedabad. There were around 20 brave lawyers. Mr. Majid Memon was giving them a long lecture on the constitutional niceties of the law and I happened to have a copy of *Sandesh*, the lo

cal vernacular paper with me and the headline read that all the cabins and chairs of the Muslim lawyers in criminal courts had been totally burnt down and not a single Muslim lawyer was allowed to enter the court. I asked Mr Majid Memon to find out some way to get into the court before we discuss our constitutional law. When I filed a writ petition requesting the police to file an FIR, the judge was absolutely shocked as to how I could argue such a case. That was the way the judiciary was operating in 2002. That is the problem in acute communal situations and we have to find some strategy that will help us fix this.

Gujarat was chosen to be the communal laboratory. This was developing for a while and the media had a special role to play in this, especially the vernacular media. On 27 February 2002 the train burning took place, we still believe and will continue to believe, that it was not a pre planned murder at all. Of course, the judgement is exactly the opposite. The entire media suggested that it was Jehadi terrorism and that it was further instigated by a statement given by Mr Modi himself. That set the ball rolling. The next day, 28th February the media reported in one of the worst reports that we have ever seen that the Muslims not only closed all the doors of the coach and set the coach on fire, but they had also taken some of the Hindu women, raped them, cut their breasts and then they had killed them. This is absolutely wrong. The next day, even the government refused it and rejected the news item but the damage was done and the entire Gujarat was in flames. Most of the women who were attacked and burnt alive were killed to avenge the alleged rape and killing of ten women that was reported in the vernacular media. That was how the media operated in those days.

But the press has changed over the years. The same vernacular press now reports the other side quite prominently and I can give some examples. But there was one person who did a commendable job in those days and that was Teesta Setalvad. In the first two weeks when absolutely no information was coming out of Gujarat, especially from the communalised media, she and her team would get an almost comprehensive report of what was happening all over Gujarat. That story was published in her magazine, *Communalism Combat*, and that was the first time I read and got an understanding of what was occurring in Gujarat. I think that was a very brave and brilliant piece for which she must be praised. Starting from there, the struggle has intensified.

The issue today is defending the defenders. As I was trying to tell you in the beginning, in communal situations there are really no defenders. Advocate Mr Phulka had suggested that the minority community which is under attack should retreat into the background. I disagree with it as a strategy, because our strategy in Gujarat was exactly the opposite and I believe we are seeing some success.

We have to understand, (and this is my personal view) that humans are created by nature but rights are created by society. So when we talk about human rights, these two words, somehow to me do not fit in together. In fact, our Constitution does not really talk about human rights, it talks about fundamental rights and there are reasonable restrictions placed on fundamental rights. Whatever violation of fundamental rights occur, these occur within the sweep of these reasonable restrictions. The grievances that we have against the court are essentially the reasonable restrictions they have been putting on



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our unreasonable exercise of fundamental rights. So, first try to understand the irony at hand. When we say the word "human rights" in a society which is divided by caste, class, creed, religion and community, there are no humans that we can generalise. It is either you have working class rights, or you have Adivasi rights, or you have rights of different castes, different creeds, rights of different religions etc. but there are no human rights. The Protection of Human Rights Act is, therefore, a useless piece of legislation. So my first point, as strategy, is that we have to look at the courts dispassionately because the court system is also a part and parcel of the State and by upholding all the human rights violations the court is essentially trying to support the State within the framework of reasonable restrictions. Now, those of us who accept the State as a primary arbiter of the disputes within society would expect the courts to deliver justice. Those of us who do not accept the State to be the primary arbiter, will look at the courts in a different way without any illusions and I think our strategy lies between these two viewpoints. I, personally, reject the State being the arbiter and therefore, I do not accept the courts' role as primary defender of either fundamental rights or human rights. Of course, I do not even believe there is anything called human rights. There are rights for the human, human beings are divided into different caste, creed and religion.

Now, having said so, the question comes to law and whether we like it or not, after having said everything against the court system we all fall back on the same mechanism. The reason I made my open remarks is that if I go to court without any illusion or any other institution of the system, perhaps I can use it to my advantage. When we say that all courts are corrupt, useless and cannot deliver any justice then we are going wrong somewhere because if we accept the system then we have to accept the courts and therefore, we have to make full use of it. In Gujarat, both at the level of the apex court and now at the level of the high court and at the lower courts, we have started to see results.

As part of the human rights strategy I totally agree that other factors like culture, education etc. are important but that is simply not going to immediately protect you from the atrocities of police. You need legal protection. So the human rights activists must as a strategy accept and adopt methods and contradictions within the system to use the various institutions of the system. I will give a small example, that is the use of Nanavati Commission. I have been doing it for the last ten years. In 2002, everybody boycotted it and in their right mind they should have. But I did not have that right mind and so I joined it. And believe me we could get a gold mine of information out of it. Today, if we are able to file cases, it is primarily because of the massive amount of information that has come out of that particular commission. I have absolutely no illusion that this commission is going to give a report which would go against the government. In fact, it has already provided a report stating that the Godhra riots were a case of conspiracy and has given a clean sheet to Mr. Modi since nobody has ever alleged that he had burned the train. Now that the next election is nearing, the second part of the report will be released, and the second part of the report is quite obvious. But that is another issue.

This is a place where, procedurally, there was little democracy. I had the opportunity to cross examine the entire police force right from the DGP to the lower level officers and they unwittingly made several admissions including the fact that the chief minister

had ordered that the dead bodies of the 56 persons who had died in Godhra be brought to Ahmedabad, because Ahmedabad was the place where they wanted to start the en ture genocide and I do not know how many of you know that the dead bodies were not brought by the police. The dead bodies that were still not identified dead bodies which are still a part and parcel of a criminal case, were handed over to the general secretary of the VHP, Mr Jayadeep Patel I have that written takeover sheet it was signed by Jayadeep Patel taking the 56 dead bodies from the police and bringing it to Ahmedabad And then, they had a funeral procession at 10 30 am, something like 25,000 people joined and the morning paper was full of those stories You can't imagine what the state of the mind of the people was and the VHP leaders openly led them and from there, the first burning took place that was the Naroda Partia Noorani Masjid.

So, therefore, a democratic institution can still give rise to a lot of information Similarly, I think as a part of strategy at the national level, we must have an alliance of organisations Also, I think HRLN especially can play a very important role that we should be able to train lawyers not with illusions, but with clear vision about how the law and courts can be used at the local level. The apex court is there There are senior counsels But the prob lem lies with the lower courts I would conclude by saying that as a part of the strategy let there be an alliance formed by all the human rights organisations and of different states and let Mr Colin Gonsalves take the responsibility of starting that initiative. We should have serious aggressive lawyers who are not the traditional type, lawyers who do not accept this legal system to be the primary arbiter



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**MANISHA SETHI**
*Jamia Teachers Solidarity Association*

***We have seen just how easy it is for the security agencies to pick up somebody and kill him while suspending all the legal norms. 'Picking up' is a phrase that has become normalised today. It means illegal detention without any warrants being produced; it is when security agencies arrest people, raid homes and produce seizure lists without issuing seizure memos and so on - all in the name of 'National Security'.***

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I intend to talk about not communalism in general, but in particular about the kind of communal witch hunt we have been observing since the year 2000. We have seen that the police, the intelligence agencies and the security agencies have been allowed, in the name of national security, to target minorities as part of the national security programme in such a manner that this communal witch hunt has become a kind of national duty. In 2001, directly after the Parliament attack, the Indian Parliament quickly passed POTA. This Act closely resembles the Patriot Act (of the US) and was passed despite the controversy surrounding its legislation. The POTA was infact a kind of reworked version of the earlier tainted draconian law TADA. Now, what has been happening since 2001 is a steep rise in encounter killings. We have seen just how easy it is for the security agencies to pick up somebody and kill him/her while suspending all the legal norms. 'Picking up' is a phrase that has become normalised. It means illegal detention without any warrants being produced, it is when security agencies arrest people, raid homes and produce seizure lists without issuing seizure memos and so on. All in the name of national security.

The easiest and unquestioned target is the youth and people from the minority Muslim community. In this way you find that there is a methodological definition of suspects and frame-ups which have been shaped over the years. Encounters are justifiable even though they do not follow any legal process, and it has become legitimate to target and kill a section of your citizens and claim that it was an act of national security.

Earlier on, in a city like Bombay, the people who were encountered used to belong to the underworld but gradually we began to notice that the underworld actually identified with a particular community. That is, the people encountered were also in a certain

cultural category. We have had the Kashmiris, the Sikhs during the years of militancy in Punjab and now the Muslims. I may not have had experiences as strong as some of those present here, but whatever little experience I have had was as part of the Jamia Teachers Solidarity Association (JTSA) intervening in the Batla House encounter and so on. We soon realised that the Batla House encounter was not a unique or rare phenomenon. It is rampant and prevalent.

I will speak very briefly about my experience in the Batla House encounter case. The National Human Rights Commission had issued guidelines in 2002 which said that an FIR must be filed against the police party involved in the encounter, and second, that there has to be a magisterial probe, failing which no merit promotions and awards can be given to the member of the police party which conducted the encounter. All these guidelines and norms were suspended in the Batla House case. When these issues were raised and petitioned in the Supreme Court, the SC said that the magisterial inquiry into the incident would lower the morale of the police force, which is a tragic attitude. There was a great amount of fear not just in the Jamia Nagar locality, but also in Azamgarh for example, from where the boys who were killed and arrested belonged. After the encounter, there were a number of illegal detentions and arrests and that is again very common across the country. A couple of months ago, we visited Madhya Pradesh in a fact finding mission as we were getting calls from some organisations saying that there had been a series of arrests in June in Madhya Pradesh in the name of SIMI. We made enquiries and found out that not only in the recent past but from 2001 onwards, since the day the SIMI was banned, there had been hundreds of arrests made in the name of SIMI.

The injustices are so blatant in the country today. In a particular case in Ujjain five people were arrested by the Madhya Pradesh police and they were accused of being members of SIMI and that they were practicing air-gun firing in the backyard of a mosque. The story originated in a local neighbourhood, eventually it became a national headline. Later, the police in its defence claimed that there were four eye witnesses at 2 o'clock in the morning. Now, each of these five men submitted affidavits in the court saying that they were not present at the site. The truth is that they were called from their homes the next day to the police station and were made to sign blank documents under police pressure. So even though there was no credible evidence against anyone, these five men were prosecuted and sentenced to six years imprisonment. Legal principles were suspended because these five men belonged to a minority community. Recently, an RTI enquiry revealed that the special cell has a successful prosecution rate of 30 percent. This means that 70 percent of the cases filed by the special cells end in acquittals.

There has quite a lot of breast beating in the media about it, with commentators saying that the police force are not so technically equipped, that they suffer from poor infrastructure, that they are not trained well enough and so on, but if you really look at the kind of judgements that have been coming out and examine the cases a little more closely, you will find that it is not a question of poor investigative skills or poor infrastructure at all, it is a case of frame ups. If you look at the special cell cases, regarding Kashmiris for example, they are clearly under surveillance in this city by the special cell. They can be picked up at any time without determining the truth. The press do not comment on the



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judgements most of the time because it is deemed very unpatriotic to question the acts of the special cell or any anti-terror agencies. We have seen this at the time of the Ansal Plaza encounter and at the time of the Batla House encounter. When the Batla House encounter happened, no less than Pranoy Roy – head of the ostensibly most secular media house – came on television and said that those who were questioning the martyrdom of Inspector Sharma had stooped very low. This is how all the institutions, from the secular media to the court room, operate.

There is another case in which six youngsters, of which five were Kashmiris and one was from Bihar, were framed. It was said that the special cell had engaged them in an encounter and caught them and they were members of HUJI and were caught with a large amount of RDX and ammunition. These youngsters were acquitted by the court six years later and it turned out that the police had actually kidnapped them well before the encounter was dated. This kidnapping by the special cell is quite routine. They kidnap people, keep them in undisclosed locations for days. They are tortured, made to confess crimes they did not commit, and then charged. The special cell then holds a press conference, displays a cache of arms and ammunition, money and so on, and then claims that operatives of HUJI or Lashkar or SIMI have been caught. The case comes to the court and after six or seven years the court sometimes acquits these people. But there are no media present outside the court room to report the story, and rarely does the story receive any media hype as it does during the actual arrest.

There are a few things that we would like to put forth on behalf of the JTSA. This relates to what has happened in Malegaon. We have just seen what happened in Mecca Masjid, where the CBI overturned the theory of the Andhra Pradesh Police, where the AP police made out a separate case of conspiracy and still kept harassing those boys. So as we are discussing a strategy to overcome this. What we need to do is to build up a national alliance across the country demanding reparations for those who have been falsely framed and prosecuted.

There are cases where the family members of implicated people are suffering from depression and mental illness. Somebody has to pay for it. Also, there is the issue of prosecution. In the same case, under which these six men were acquitted, the court ordered that an FIR be lodged against these erring policemen and a departmental enquiry has to take place within a month. So, after a month, the JTSA filed an RTI application with the Delhi Police trying to determine the status of the enquiry. We learnt that there was no trace of any investigation, rather they had already filed an appeal in a higher court and the case remains pending till date. It is not a case of a few bad apples and of some people being problematic. If that were so, then these erring policemen would not have gotten away for so long, they would have been suspended and taken off duty. But this is not happening despite repeated complaints, and this is not the first time orders have been made against them. I think it is time to review the extraordinary powers of these special cells and these ATS's. The notion of national security is fine, but these special cells have been fortified like the army, having complete immunity from prosecution and from departmental inquiry. This needs to be reconsidered and questioned from an objective point of view through a national level campaign.

**TEESTA SETALVAD**
*Social Activist*

***In the Best Bakery case, the higher judiciary is speaking about communal violence for the first time. But, we are moving two steps forward and five steps backwards. The worst example is that of the SIT, which is a continuing nightmare for us as we are tackling the cases, now the Jokia Zafari case, and the CGP case. The SIT is the major stumbling block.***

I want to begin with Mukul's comment that Gujarat has become a kind of show case study for some of us. I would like to make reference to the echoing of absolutely chilling stories from Punjab and Kashmir which one has been hearing for 15 to 20 years. I would emphasise between what happened in 1993 in Bombay and what happened in Gujarat. It is really appalling how we are not able to keep centre-stage issues like Punjab and Kashmir and the devastating human rights violation there. And now things are getting more and more mainstream, the violations are coming more and more closer to the heart of India.

If we look at Chhattisgarh, I can't get over the way nun Valsha was killed just three days ago and I am appalled at the media. Today we have one report in the Indian Express which is trying to track the story, which says that she tried to report a rape case the day before she was killed. But other sections of the media including the largest circulating English daily has gone all-out to divert the story, as if all are speaking the mind of the mining mafia. So, I think this is really the core of the issue for all of us here today.

The media is no longer looking at human rights work on the ground, human rights defenders working on the ground and talking about the culture of human rights within our institutions, with any degree of sincerity - and this should be part of our strategy. I am bringing this up not to bash the media -- I consider myself a part of the media as well -- but we need to look at what it means in terms of our strategy. Media today is not an ally in exposing human rights violations. The same Gujarat of 15th March 2002 that Mukul referred to, did not become like that overnight. What is strange about communalism is that it festers and captures institutional space and societal space for years before the party that represents it actually comes to power. I still remember when Justice Ahmadi, who rose to become the Chief Justice of India, was first appointed as a district judge in Gujarat in the 60s. All the bar associations of Gujarat tried to protest that a Muslim judge was appointed. Yet you have a large number of Muslim lawyers in the state. There are all sorts of contradictions one has to deal with. One of the core areas we need to be looking

at is the cultural, educational and legal front, when we talk about tracking communalism as human rights defenders. There are two areas of experience that I need to share with you. Many people are learning about our work in Gujarat. But in terms of rewriting a social study and history syllabus which is more democratic, which means looking at our minority communities' past, present and future, we have run into trouble. For instance, in Maharashtra, when we tried to project Shivaji as a pluralistic leader who had lots of different communities in his army and was not somebody from the upper caste, as the brahmins would like to think, but was actually from *shudra* caste, we were attacked physically by the Shiv Sena.

A great deal of communalism is faced with if you are battling as a human rights defender in the educational and cultural arena as it requires relooking at symbols, histories. Dalit history, tribal history, minority history, women's history etc. All this needs to be part of our stategy. Otherwise, what we are talking about is legal fire fighting. During the Bombay riots in 1993, in which Justice Sri Krishna indicted 33 policemen in his report, some of us filed an RTI in 2007 and discussed that every single policeman who was indicted by Justice Sri Krishna was promoted by two successive Congress governments between 1990 to 2004. This particular characteristic of communalism is what I would like to point out. Mr. Pbulka is here, so he is the best person to speak about the kind of impunity of the perpetrators of 1984 and the fact that in the law you actually have the perpetrators of communal violence being in large majority because the majority backs the violence perpetrated on the minority.

When we make a balance sheet of how much we have succeeded and how much we have lost, I think a lot of it has got to do with just procedurally fighting hard at every stage in terms of the struggle for justice. So, the first time, for instance, due to our collective efforts and for that I would really like to laud Mukuls valiant struggles in the Nanavati Commission, so much evidence has come out in the open. For the first time in the history of the country, the Supreme Court has given protection to over 560 witnesses, victims, survivors since 2004 and we need to systematise this. It is not simply to say that it happened in Gujarat, it's basically to understand that without the protection, they would not have deposed in Sardarpura, they would have not deposed in Gulbarga, they would not have deposed in Partia. It's all very well for Modi to say that I have won an election and Gujarat is safe. The point is that it is not. It is because of the protection given to every eyewitness, survivor and victim, that he or she had that courage to go up and depose within the court. I would like to focus on some very key issues and share with all of you because many of us are fighting in the courts.

We need to ask for a very simple thing like a CCTV in the court room. I think trial courts must have CCTVs, if they are not open to the media. With the help of close circuit televisions, if the conduct of that trial is prejudicial to the victims, survivors and complainants, it can be used as evidence in the higher court. We can do so because we have seen situations where our Gulbarga witnesses have been humiliated by the judge who actually made comments like "does this woman look like as if she lost her son" in the open court while the Supreme Court was monitoring the case. It took us one year with the Supreme Court monitoring the case to get that judge transferred. And because the Supreme Court

did not come to us directly, we went to the principal judge, then the session court, and thereafter to the high court. The high court adjourned the matter 18 times from February 2010 to September 2010. Every week, we mentioned it twice and it got adjourned. Finally, when we pointed it out in the Supreme Court, the Supreme Court asked us as to what was our problem with the judge? We drew his attention towards the remarks that had been passed by the judge in open court while our victims were deposing.

So, the whole atmosphere of criminal jurisprudence is so loaded against the complainants, so loaded against the victims, poor, *adivasi*, minority or a woman, that it is impossible to move an inch without the assistance of either legal aid groups, legal rights groups or human rights groups. We are fortunate that we have just got a judgement in the Sardarpura case finally, which said that we did not tutor the witnesses, but we don't know what will happen in another court, or in another case because allegations are constantly made on us for tutoring the witnesses.

Our constant position is that we were not there when this incident happened. We are simply enabling them to depose with courage, to get decent legal counsel and to make sure that the procedures which are very onerous legal procedures are fulfilled. So, you have a whole system actually working against the deliverance of justice. But somehow we have managed to get witness protection in the Gujarat cases so far. On the question of prosecutors, however, we have not been successful. Despite the fineness in the Best Bakery case, where we had a very good prosecutor in Bombay, and the Bilkis case where we had a good prosecutor in Bombay, the Supreme Court monitoring the SIT cases does not have good prosecutors.

The Supreme Court today is presiding over eight trials in which all the prosecutors are not really independent and lack integrity. So, it's actually two steps forward and five steps back even when it comes to the higher judiciary in this country. I would like to pose the issue of discriminatory justice with the poor in this country. When it comes to communalism, I would just like to say that if the accused is a Muslim or a Christian or a Sikh, then you are much more likely to get discriminatory justice.

One of the most infamous records of the whole Gujarat justice process has been the fact that 86 of the Godhra accused were not given bail till the judgement was delivered. They were never given bail, whereas all the post Godhra accused (except for 7-8 in the Gulbarga case and 8-10 of those who did not have a godfather or were lower castes), the Babu Bajrangis, the Maya Kotnanis, and all these people were out on bail within 2-3 months of their committing very violent gruesome crimes. Many of us have articulated this, we have stated this in writing and invoked the wrath of the Supreme Court for saying that there is discriminatory justice in the country. I am very ashamed to say that the Supreme Court appointed SIT, whilst arguing the Godhra case, did nothing to challenge the prosecution chargesheet, did nothing to improve the investigation or correct it. On the contrary, they had very vindictively argued for the death penalty of 11 of the convicted accused. Our organisation, along with the victims and survivors in the Sardarpura case, gave in written arguments and said that we wanted a conviction but we did not want the death penalty for the accused. These are some of the nuanced victories that we have gained. These are some of the rewarding moments in the whole struggle. But it is a



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very painful process, because at the moment I think the judiciary is really posed on the sides of the status quo, if not with the perpetrators. That is they would not like justice to be actually delivered because I do not think it is difficult for the Supreme Court and for the higher courts to monitor their own orders. That is where they failed. The failure of the higher judiciary is monitoring the orders they issue. Why is that such failure is not being monitored? Why does the higher judiciary in this country so far take sides with the state governments, government affidavits, government officials and believe in affidavits rather than in human rights groups. We have to be so careful about what we put down on an affidavit because if there is a small error, we are likely to be slammed for life.

In our own case, the Gujarat state had lied on affidavits before the Supreme Court on seven occasions and Justice Uma Pai passed an order in 2004 saying that the state of Gujarat had misled the Supreme Court on the question of bail and even then no structures or anything else was seen in the final judgement. This desire by the courts to be kind towards the governments, and by and large towards the government officials in their affidavits, and being stingingly critical of the human rights groups and PILs is also a huge deterrent. There have been attacks on lawyers, apart from attacks on social activists. I have, for instance, three anticipatory bails granted to me from Gujarat and Bombay because of various allegations made in the course of the struggle. But apart from that, lawyers like Mukul and Suhail have been targeted by the Bar Council of Gujarat. This has taken the targeting of communal acts to an all time low. A lawyer is doing his/her professional duty by helping the victim community simply because they are the people who are proved to be the channel for deliverance of justice.

If we take up the issues in Uttar Pradesh, you will recall the blasts that took place in 2007 and 2008. There are many attacks on the young lawyers in Barabanki and in Lucknow. Any lawyer who wanted to appear for the accused, even Suhail and another lawyer were brutally attacked. I think we need to invoke the institution of the bar council in various states because I see that in Maharashtra since about the mid 80's the right wing swings of the bar association supporting the communal groups is so apparent that they have forsaken their professional ethics by supporting them. I remember in 1993, when the Babri Masjid was demolished, there were just three lawyers arguing for a resolution to be passed in Bombay to condemn the violence there and it was very difficult for them to get that resolution passed. There was a huge opposition to it. So, I think these are issues that we need to flag when we talk about our strategies.

I want to mention two or three more issues. One is the name which surfaced this morning in the context of Punjab. What can we possibly do in the human rights community, how do we remember, who the perpetrators were and who the collaborators are? I think this is something we are not used to. We need to profile the people who are the perpetrators of 2002, 1993 Bombay riots, and '84 riots. It struck me so sharply when Mr. Phulka mentioned Mr. K.P.S. Gill. Do any of you have any idea what he did in Gujarat? He was brought in by the NDA in May 2002 to Gujarat and it was only after he went there that the so called violence started to subside.

I am saying all this in order to emphasise that there are connections in it. These things don't happen naturally. It is not naturally happening that the judiciary is not giving us our

constitutional rights. It is happening because certain kinds of people are being placed in the judiciary by a certain set of collaborators who are also the violators of economic rights They are also pro-globalisation and support large corporate groups. It seems that the political lines between the BJP and the Congress Party are now blurred These are the kind of issues we are looking at Gradually, I see things getting worse in the years to come and not better. The Supreme Court has spoken on communal violence for the first time in Gujarat related cases.

In the Best Bakery case, the higher judiciary is speaking about communal violence for the first time But, we are moving two steps forward and five steps backwards The worst example is that of the SIT, which is a continuing nightmare for us as we are tackling the cases, now the Jakia Zafari case, and the CGP case The SIT is the major stumbling block. The National Human Rights Commission, for a change, petitioned the Supreme Court, but after petitioning it has disappeared from there. Nobody appears for it, no body asks for it, there is not a single document filed by the NHRC And after that it has completely vanished from the scene. There is a need to question steps like this.

I would like to talk a little about the Haren Pandya case and several encounters But Haren Pandya's case, like many of these extra judicial killing cases in Gujarat, reveals another terrifying possibility that is emerging. One thing that is very clear to some of us, after 2003, is the collaboration of the powerful in Gujarat using sections of the criminals gangs who happen to be Muslims. The powerful use gangs for their criminal acts, this is becoming clearer and clearer Accused number one in Haren Pandya's case Mufti Sufiyan disappeared; escorted ostensibly by a Gujarat police officer to Pakistan via Bangladesh He vanishes and how do we know who the mastermind is? Similarly Nadeem Syed, who has just escaped, threatened by Mehboob senior, again part of the criminal gang. Imtiyaz Sheikh, one of our witnesses in the Gulbarga case, threatened by Mohd Sahid. FIR has been filed. So, this is the very sinister sort of scenario which is emerging and poses a huge challenge to us.

The high court judgement in Haren Pandyas case has completely reversed the convictions that were given by the trial court So technically, investigation should continue till the time the absconding accused is brought back. Therefore, there is a greater responsibility for the human rights defenders who risk much more than their lives I would like to pay huge tribute to the lawyers who have worked with us, 18 lawyers working for CJP, two in each trial case Seniors and juniors who are monitoring the trial every day, without them, this work would not be possible



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**SHABNAM HASHMI**
*Social Activist*

***Today, we have a government which is becoming more and more authoritative, serving the interests of the corporates and multi-nationals. When the marginalised sections become a liability, then how can anyone defending their interests be seen with any respect? That is why we are all labeled as "traitors", "Maoists", "terrorists", "anti-nationals" and hence the attacks of every kind, including those using guns, on defenders.***

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What are the factors that have led to a situation where we are saying that we need to be defended when we ourselves are human rights defenders? What is the kind and nature of threat that the human rights defenders face in the country today?

Earlier in January, a number of human rights defenders, while on their way to hold talks with a central government expert panel, were attacked near the Tirunelveli collectorate in Tamil Nadu. They were attacked so brutally that they had to be hospitalised. These were the representatives of People's Movement Against Nuclear Energy, a group that works to protect the local people from the negative effects of the development and operation of the Koodankulam Nuclear Power Project. The group of activists was led by SP Udayakumar.

In 1999, when SAHMAT was observing its 10th anniversary, I had invited SP Udayakumar and Harsh Kapoor to the convention. Udaya was teaching in Minnesota University at that time and Harsh was in France. I knew both of them through the internet and our common work against the communal forces in the country. We were meeting for the first time and on the very first day Harsh, Gauhar Raza and I gave Udaya a nick name 'Gandhiji' as we found him too simple.

Udaya's wife was also working in an adoption agency and since both of us shared a passion for adoption, we also became friends and started corresponding with each other on the emails.

Then one day Udaya announced and they had decided to come back to India and start a small school in their village. Recession had not started yet and his decision was not influenced by any economic or business consideration. He had a very comfortable life and a very good job in the US when they decided to come back to India for good.

And what fate did he meet here? The same SP Udaykumar was attacked with stones for being an "anti national", for opposing the nuclear plant for its negative impact on peoples lives.

In 2004, after the Gujarat pogrom, thousands of activists and lakhs of ordinary people worked day and night to defeat the NDA as the politics of hatred was something which an ordinary Indian did not approve of. A large number of those activists today face the threat of being attacked, termed anti-national, jailed, or even killed. Most of those who worked against the NDA had hoped that the oppression, atmosphere of intimidation, shrinking secular and democratic spaces, throttling of freedom of expression would stop with the defeat of the NDA regime. Unfortunately, none of that happened. Today, we have a government which is becoming more and more authoritative, serving the interests of the corporates and multi nationals. When the marginalised sections become a liability, then how can anyone defending their interests be seen with any respect?

That is why we are all labeled as "traitors", "Maoists", "terrorists", "anti nationals" and hence the attacks of every kind, including those using guns, on defenders.

In such a scenario to call for defense of the human rights defenders is not only justified but essential. The attacks on human right defenders are on the increase both by the State and by non state actors.



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# Session 8

# ASSAULTS ON THE MEDIA

NATIONAL CONSULTATION ON
HUMAN RIGHTS DEFENDERS
19-20 November 2011
India Islamic Centre, Lodhi Road, New Delhi

**MANOJ MITTA**
*Senior Editor, Times of India*

***There are some valid questions to be asked and there was reluctance on part of the media to raise those questions or highlight those questions. We have not been, in many instances, independent enough. I plead guilty to that charge.***

I am from *The Times of India* and I have with me a panel of fellow journalists and as it was pointed out in the session preceding this one, human rights defenders, those specially dealing with communal violence, have expressed grievances about the manner in which the media, by and large, has been conducting itself. As a journalist, I must admit at the outset that I have no quarrel with that grievance. I am acutely conscious of the fact that as an institution, media has ceased to be an ally of human rights defenders. There are of course honourable exceptions, but they really constitute a minority.

As Justice Katju very infamously said, and which is a major controversy in the media, "journalists these days are more into promoting corporate interests rather than public interest." That is how the media is being increasingly perceived and there are good reasons for doing so and there are ample examples which bear out the suggestion that we often are more into promoting corporate interest and often working contrary to the public interest. Some of those instances have been mentioned here. Manisha Sethi lamented the manner in which the media bought into the police line on the Batla House encounter, glossing over the holes in ther version. There are some valid questions to be asked and there was reluctance on part of the media to raise those questions or highlight those questions. We have not been in many instances independent enough, and I plead guilty to that charge. Fortunately, the panel that I have here are an exception to that general rule. We have with us Shoma Chaudhury, from *Tehelka*, who needs no introduction as far as human rights defenders are concerned. You know that in the context of Gujarat riots, *Tehelka* played a stellar role in exposing State complicity. Who can forget the great sting operation done by *Tehelka* bringing to light a whole lot of admission made by VHP

activists and others. It could not be ignored by courts trying carnage cases. NHRC has certified that the *Tehelka* tapes were not tampered with. This shows that you can't totally debunk the role of the media; there are exceptions like this.

Let me now draw your attention to the significance of the date on which we are having this meeting. Today as you all know, is November 19th and it's a big day in Delhi because a whole lot of politicians on this day will make a beeline to Shakti Sthal to commemorate the birth anniversary of Indira Gandhi. But then, to me, as a journalist imbued with some human rights consciousness, November 19th is also an anniversary of a very shameful episode, which none of us should ever forget. It was on this day in 1984 that Rajiv Gandhi made a shameful justification of the '84 riots, in his first ever public address as prime minister at a Boat Club rally. This is what he said: "when a big tree falls, the earth is going to shake." It was a statement of extraordinary insensitivity, it was a statement which sort of set the tone of the cover up that followed. You will find the entire speech in a book brought out by the government on Rajiv Gandhi's speeches. Unwittingly, it confirms that there is not a word of sympathy or concern expressed about the thousands of members of the minority community, whose lives were devastated, who lost their lives, who were orphaned, who were mangled, maimed, rendered homeless, raped; not a word of sympathy for any of them. On the contrary, the prime minister went out of his way to express his empathy for the anger, the intense anger that people felt over the killing of the prime minister.

So, this is the kind of selective outrage he expressed, setting the tone for the cover up. This is similar to what Modi himself did in the context of Gujarat riots. His speech was delivered at Becharaji in September 2002. Again it was sandwiched between the massacre and the election that followed. That was a speech in which Modi infamously talked of how he had been intolerant of relief camps, how he saw these as child producing centres, and he went on to talk very insensitively about this minority community which had just been attacked on a large scale and had hardly recovered from that violence. Modi chose such a moment to mock at them saying, "*hum paanch, hamare pachchis*" under the guise of promoting family planning.

Since we deal in words, we in the media could play a role in checking this deplorable tendency on the part of political leaders to set benchmarks for insensitivity to human rights. We should fight with creative ways of highlighting the dangers of Rajiv Gandhi's Boat Club speech and Modi's Becharaji speech, to deter politicians from indulging in hate speech. This could help create an environment that is more friendly to human rights defenders.

Let me now introduce Mr Kumar Badal, who is one example of a journalist who actually spent several weeks, months in jail because of the stories he did for *Tehelka*. He was out to probe the poaching that was taking place in Uttarakhand. But the government, in collusion with the poaching lobby, hit back at Badal, foisted a false case on him, subjected him to incarceration for a long time and he is still facing the ordeal of attending court hearings. So, despite all the infamy, we ourselves face attacks for exercising free speech to protect the public interest. Some of us journalists put ourselves in positions of great dangers.



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And, as Mr Kumar has rightly said, it would be unfair if we are all tarred with the same brush, but at the same time I must say that this bias against the media is not entirely unfounded especially when it comes to the mainstream media. And as one of our friends here said, and he is rightly justified in distinguishing the mainstream media from the kind of organisations that Kumar Badal has been working with. I am part of the mainstream media and I can vouch for the fact that the environment in the mainstream media is corporatised.

Take the bias in corporate India in favour of an infamous, egregious human rights violator like Modi. Given the following he has acquired everywhere for his role in the 2002 carnage. I can't get away from citing his example again and again. Now he is the darling of the much respected corporate figures like Ratan Tata, Mukesh Ambani, etc. Other than exceptions like Anu Aga, most corporate leaders seem to think that this man is prime ministerial material. That he would be great for the country, he is pro GDP. He is great for economic growth. That he has blood on his hands seems to be a minor detail that they would not allow to come in the way of their overall appreciation of the man. Given the insidious hold corporates have on the media, journalists have also been betraying a bias in favour of Modi. Many journalists regard allegations of human rights violations as a bit of a nuisance. Whatever the gravity of the crimes he might have committed, we would ideally like him to emerge unscathed from these human rights issues. If there are any issues of accountability against him, that make a nice copy, we might devote a little space to them. But on the whole our bias is to play into Modi's hands, and project him as a strong administrator who is great for development. Not exactly an attitude that would earn us the confidence of human rights defenders.

Shoma Choudhary has just now made a telling observation about the myth of impartiality. I couldn't agree with her more. The media is often under pressure to fit into this slot of impartiality. But as Desmond Tutu said, in a situation of injustice, anybody who chooses to be neutral is on the side of the perpetrator of the injustice. Yet, when journalists aggressively pursue cases of human rights violations, we are accused of losing our sense of detachment, turning into activists, and of crossing the line of professionalism. I remember that when I was pursuing the issues of '84 riots during Rajiv Gandhi's reign, I faced a lot of hostility. The insinuation that used to be made then was that whoever was espousing the cause of the victims of the '84 riots was somehow mixed up with anti-national elements, was being oblivious of the conspiracy to break up the country and so on and so forth. The hollowness of the propaganda was established when the same issue of '84 riots became acceptable in the vastly changed circumstances of the Manmohan Singh reign.

The crusader of justice in the '84 cases, Mr Phoolka, who is sitting here in the audience, suddenly found himself much in demand in the media in recent years. The same media was nowhere to be seen in the '80's when the wounds of the Delhi massacre were still fresh and so much more evidence was available. So these perceptions of some journalist being an activist and exceeding his brief as journalist can be a very ephemeral, and this can be very subjective or susceptible to change, as is evident from the personal example I cited just now.

I would like to give one more example about the myth of neutrality in the media. This one is from my home town Hyderabad. We grew up in seventies and eighties. We were accustomed to reading about Majlis Ittehadul Muslimeen (MIM) as a communal counterpart of the RSS. Both organisations were notorious for their involvement in communal violence. But then, when MIM turned into a champion of human rights in the context of the Mecca Masjid blast and the subsequent police firing, there were hardly any takers in the media because of its communal baggage. As a result, while the media by and large stayed "neutral" amid all the evidence coming out on police excesses, it was left to MIM to plough a lone furrow playing the role of a human rights defender. The fact that authorities themselves now acknowledge that the Mecca Masjid might not have been an act of Jehadi terror should shame the media into realising that it had again been caught toeing the police line. There was so much evidence that was staring in the face. Yet, we ignored all that evidence as we were too swayed or intimidated by our sources in security forces or investigative agencies. Scores of innocent Muslim boys, who had been tortured in jail for many moths, were ultimately let off, thanks entirely to the efforts of MIM and its lawyer against heavy odds. We should learn a lesson from our failure to question the claims made by security agencies at a time when our intervention could have checked human rights violations.

While there is this dark side about us in the media, there is a bright side too. We are a mixed bag. A lot of us have the potential, the will to ally with human rights defenders in just causes. We may not always respond with due alacrity to your calls. Sometimes we may let you down. But at other times we may prove to be more than useful, because of the impact a well done piece of journalism can have. The media has its role cut out to promote a culture in which human rights defenders are not only secure, but also heard with respect.



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**KUMAR BADAL**
Journalist

***Generalising the media is not right as a large majority, especially in small towns and tehsils, are doing their work as fairly as they could do. It does not sound proper since we are a living example of how honestly and courageously we are doing our work. And even despite the witch hunting and arrests, we continued with sting operations that exposed the government and the high and mighty***

Some people in this room have this generalised opinion about the media, and we know that the media is gradually becoming the latest whipping boy of the country, something reserved for long for the politicians in public domain. But isolated cases should not lead to describing the whole media as manipulative and corrupt. It cannot be doubted that journalism is 'the business of news' for some, but it's still a 'social profession' for the majority of professional journalists. The media has suffered a lot to keep the torch burning. One cannot ignore what *Tehelka* has gone through, what I have gone through, and whosoever who has had an experience of a frontal and scathing attack by the then NDA government, when they started witch hunting against *Tehelka* and the way they went about it. The might of the State was at full and ugly display.

The government agencies, such as the CBI, the IT department, the ED started raiding our premises at the behest of the then government. My home was raided, our (*Tehelka*) office was raided and when they couldn't find anything to substantiate their canards, they issued lookout notices against me to colour me as an absconder and misguide the public into believing that something was fishy. And when even that didn't work, as our lawyers sent them a legal notice (contending that when they hadn't called me to join the investigation, how could they term me an 'absconder'), they had to call me as a witness to the CBI headquarters in a case of 'conspiracy to poach wild animals'. When I appeared before them, they had no aces left up their sleeves. There was sheer pressure from their political bosses to torture me and feed words in my mouth and implicate my editors Tarun Tejpal and Aniruddha Bahal (who were the prime targets for this witch hunt) in this false, malicious and ridiculous (conspiracy to poach!) case. Even this fell flat as the court could see through their nefarious design, while arguing for my police remand, and ordered my two lawyers to be present with me all through the 72 hours at the CBI

headquarters in New Delhi. This saved me and my editors and tehelka.com from further damage.

I was sent to jail after the three day remand period was over. I somehow managed to keep my sanity intact and didn't succumb to any sinister design. Jail was a better place to breathe than the dingy cell, so initially I was a bit relieved to have reached there. But gradually it caught hold of me and I wanted to get out as soon as possible. But that wasn't meant to be as, after all. I was up against the mighty State! The individuals who were out to take revenge on us for exposing them didn't rest even after this and ensured that I stayed in jail for a long time. Going into the details won't be appropriate at this platform as the matter is still sub judice (yes even after 10 long years the trial hasn't started), but when my bail hearing reached the Supreme Court, the honourable court reprimanded the CBI for keeping me in jail for so long (six months) without bail on the plea that the investigation was still going on.[1] I was granted bail by the Supreme Court and that set me free from the incarceration after six and half months.

The main reason for attesting me was to implicate the editors of *Tehelka* on false charges, and this is established by the fact that till today, even after 10 years have passed, the case is still in the pre trial stage and even the charges have not been framed. The CBI has lost interest in the case which is dragging in the court. However, this is a big physical, emotional and financial burden on me. There were two gentlemen, on the basis of whose statements I was arrested. Both of them have told the court that they do not recognise me, that I am not the person they gave a statements against, but I am still facing that trial. One of them has even told the court on record that a CBI official had called him on his phone during his deposition in the court and tried to influence him into giving their line of theory. Technically, the trial has not even started. The charges have not been framed yet, but I am still being harassed even after ten years. I still go to court, I still have to pay fees to the lawyers. I still have a the sword of Damocles hanging on my head.

I am also a part of the media and I have been doing my work honestly, despite the witch hunting, going through an arrest and being in the jail. I was kept in two jails for six and a half months. Even after that, after coming out of jail, we did a very big story-a very big sting operation, *Operation Duryodhan*, which was on cash for query scam. Eleven MPs were dismissed on the basis of that. So we are not intimidated by these tactics. The major section of the media is doing their work honestly. Generalising the media is not right as a large majority, especially in small towns and *tehsils*, are doing their work as fairly as they could do. It does not sound proper since we are a living example of how honestly and courageously we are doing our work. And even despite the witch hunting and arrests, we continued with sting operations that exposed the government and the high and mighty.



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**SHOMA CHAUDHARY**
*Managing Editor, Tehelka*

***Today, we tell our journalists that we are not just stenographers or amplifiers. We are mediating the world and it is very important for us to ascertain objectivity. Neutrality means that you go to all the stakeholders of the story, you get their side of the story and you represent that faithfully in your story... You must ascertain the facts, the truth as you believe it to be the truth and put your moral weight behind it.***

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We all know that there are an increasing numbers of attacks happening not just on journalists, but also human rights workers, RTI activists, whistle-blowers and people who are from the organised networks. *Tehelka* is amongst the most high profile targets of these attacks. Not just Kumar Badal but also Shankar Sharma was jailed for almost six months in Tihar jail without a charge sheet against them. Kumar was devastated and lost about 30-40 kg of his weight in jail. Shahina was a journalist with us working on a terror case, which involved the Muslim preacher Abdunnasar Ma'dani in Karnataka; she was put to a lot of distress by the police. I had this real experience when a Karnataka police officer called me and said, "*aap Shomaji bol rahi hain, Shahina kya terrorist hai?*" I said, no, she is not a terrorist; she is a journalist working with us. But they still went and filed a case against her. We stood with her and got the anticipatory bail for her. This case is still in court.

There is a distinction between those of us who are in the mainstream media, are in the metros, part of the English speaking media, because there is a barricade that protects us possibly from death or incarceration. People seeking us out can be seen as a kind of security for us. There is a much bigger hinterland of journalists, human rights workers, and RTI activists on the ground who do not even have the film of protection that we do. Those are the people that we must focus on because I believe that journalism cannot remain immune from the process of a democracy, which is a legal system. I don't believe that we should stay immune from court cases; we must submit ourselves to the processes of the State as every responsible citizen does.

So, I don't seek an artificial immunity for journalism. Yes, what we do seek is factuality,

certain amount of legislative protection, but as I said I want to make that distinction between those who really fight on the ground in anonymity and those of us who are protected by just the very language that we speak. Before I go into some of the larger points i want to make, I want to acknowledge people like Kopa Kunjam, Linga Kodopi, Soni Sori, and the numbers of tribals in Chhattisgarh jails who are just languishing there without anybody to raise a campaign for them. Tribals in Orissa, West Bengal are mostly picked up without any cause. In *Tehelka*, we have done a lot of stories on people like them. We have also done a very disturbing story which unfortunately didn't catch any attention, which was about *dahis* and many left of centre radicals, intellectuals, almost 200 of them in Maharashtra alone, who have been picked up and put in jail for the possession of either Bhagat Singh's writings, Arundhati Roy's writings or Mao's books.

So, the fact is that we are beginning to constrict intellectual freedom and political dissent and I think that we have to be extremely worried about it. There are four aspects to this, which is, as a community, which cares for civil liberties we should be focused on. There is a State, media, Internet and the community of activists itself. I want to focus first on the State and I think there are three or four trends here that we must both combat and amend and one of the most significant ones is that as a society and country we have started to value security much more than freedom. I think too much of the atrocities that are happening to the community and to the ordinary citizens, are done in the name of security and I think again and again, that we must push back this trend, where the question of security matters more than individual freedom. The harm done through atrocities and terror attacks is way less than the harm done in the name of security. We will defend those who are picked up wrongly in the name of terror attacks. But I think even while we do that, we acknowledge the difficulties of security establishments in finding those behind these attacks. Doggedly, as a society, we must stick to the idea of freedom rather than the idea of security because when we pick up the wrong people, we pick up people who are whistle blowers and we pick up innocent people, which increases the cycle of hate and revenge, we push people out of the system into a place of despair and I often say that despair is the most dangerous form of emotion because that means you have nothing to lose. you have no stake in the system and you really don't care. I think this is a much more dangerous emotion in society than even hatred and prejudice ever can be. I am blaring away purely for the journalists but I think a lot of this kind of attitude in society is the what allows us to assault a spectrum of people, ranging from innocents to those who are defending human rights.

The other aspect to focus on is the framework of legislations. By large, we have a growing Constitution, we live by that Constitution, amending it as the years go by, but sticking to some basic principles on which this nation was built. But I think there is a sea of legislation now, which is being discussed, that needs scrutiny. For instance the new whistle-blowers' protection law, I think mustinclude not just government functionaries, but as a part of this society, anyone who blows the whistle. We have the principle of the presumption of innocence before one is proven guilty. Anybody who blows the whistle, who is raising a flag according to me, should statutorily get some legal protection. But as we all know, people who are fighting for human rightsare fighting for that kind of legisla

tion only, but this too is just one small piece of the larger fight. Legislation by no means is a protection against public opinion, media onslaught and lack of information.

So, we don't necessarily have to be always in a position of extreme confrontation that activists find themselves in. I often wonder about this ambiguity and complexity of positions that people must take and I have come to a metaphor for myself to explain the kind of positions that all of us must keep in society. I have come to this idea of deterrence and believe that peoples movements on the ground, people who are activists, people who are really fighting for livelihood and for life itself on the ground cannot have black and white positions of extreme confrontation. Journalists are as much in the business of exposing wrong as of persuading those who are empowered to do better, to appeal to their better instincts and to persuade those on the otherside of the fence to come to mare middle ground. I feel rhetoric and absence of information is a big factor in why there are so many assaults on human rights workers. When I speak to politicians or speak to bureaucrats, I have realised that apart from whatever prejudiced positions that they have come from, there is also a huge absence of information. We are all functioning in shallow waters, we do not have a window into each other's world and we do not have a window into each other's compunctions. I wanted to give you specific examples. Some years ago, when Himanshu Kumar was attacked and his *ashram* was demolished, apart from doing a cover story on it or on the life of Binayak Sen, *Tehelka* did much more than the just doing the journalism that we do. We also appealed to lawyers, we appealed to political parties, spoke to political parties.

We appealed to the BJP and the Congress people to understand where Binayak Sen was coming from because there was such a miasma that was created among people about him. It is important to understand that sometimes wrong decisions are taken, not just because political leaders, corporates or bureaucrats are bad essentially. It is also because they are functioning with the wrong set of information. I remember trying to push Rahul Gandhi to meet Himanshu Kumar and one of his aides was told by officers on the ground that Himanshu was a dreaded Maoist and not somebody to be trusted. Now, when you are only getting that kind of information, you can understand the kind of prejudice and smoke screen out to which people operate. Very often political leaders are only hearing what officers on the ground are telling them, what bureaucrats on the ground are telling them and they too are getting vague information from a certain point of view in the world.

I think even as we build strong deterrence on the ground, we isolate political leaders, corporates and bureaucrats as being essentially the enemy. I think it's very important to keep bridges and the channel of information open to them. They must begin to understand the world that we inhabit, the world that we are representing. Its only when you have that open channel and multiple channels of information, at least then we might hope, that they begin to take decisions based on fair assessment of something rather than the prejudice that they are operating from. I strongly believe that this channel of information is important. Today, the discussion is about assault on media, but unlike Kumar, I really believe that the media is a very big part of the problem today. Manoj mentioned the mainstream media, *Tehelka* is very doggedly trying to be a part of the mainstream

media because we believe our voices need to be heard and we have to be there in the mainstream. Our magazine has to be read by those who are in power; it is not enough to speak to the converted. The converted does not need a conversation amongst itself.

There is a kind of language we need to speak, to keep the faith, to keep each other's morale up, whereas I believe there is a wider world there and the job of the media is to have its voice out amongst the non-believers. *Tehelka*'s attempt is to be in the mainstream. I want to bring out an example, for instance of Soni Sori, whom we did a big story on. We have repeatedly done stories on Kopa Kunjam, Soni Sori, Linga Kodopi, Maoists, tribals taken to be Maoists, and the mainstream media has always branded anybody who speaks up for human rights whether it is Prashant Bhushan, Arundhati Roy, whether it's Binayak, Himanshu or *Tehelka*. We are immediately branded as either radicals or as Maoists. And it seems to be that we are outsiders to the system and are ready to bring down the nation state. That is again prejudice. What I find appalling is that the mainstream media is not only disinterested in these issues. They have no framework from which they are operating. They do not believe in the kind of society that we are all struggling to protect which is basically one where civil liberties and freedom are the basis on which democracy is formed. Individual freedom and also the idea that political dissent is not a crime. I think it is a fact that mainstream media journalists do not understand this.

There are two kinds of construction that the media has. There is the corporate construction, which is very difficult to write against because their livelihood depends on it. These are structural issues that not just *Tehelka* but I think the entire broad mainstream media is struggling with, and that's something we will come to. But the fact is also that the media has failed to understand that there are people that we must seek out and we must write for. The vacuum of information is something that the media is certainly morally responsible for and it is this vacuum in our society that has to be fixed. When stories are written, nobody is bothered to ascertain the truth. Repeatedly, you would have heard of Binayak Sen being a dreaded Maoist until the campaign for his release really gathered ground. It is unpopular to be from the media and to criticise the media, but the media has been groomed with this fallacious idea of journalism, which is neutrality and objectivity taken to extremes.

Today too much of the media is about 'he said, she said'. *Tehelka* was also a victim to this tendency and I think that the first time we really understood this was when we did this 2001 story on corruption in defence procurement. We were subjected to the most slanderous campaign possible and the most frustrating aspect of that was you could imagine the government coming down strongly on you. What we could not understand is that the media fraternity would do as x, y z from the BJP government said this, Tarun Tejpal from *Tehelka* says this, and that was the end of the story. That puts you into dialectic of two opposing forces, he said this and she said that and what is the audience supposed to believe? How are they supposed to read the world? Today, we tell our journalists that we are not just stenographers or amplifiers. We are mediating the world and it is very important for us that to ascertain objectivity, and neutrality means that you go to all the stakeholders of the story. You get their side of the story and you represent that faithfully in your story and so journalism must become a point of view. You must ascertain the



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facts the truth, as you believe it to be the truth and put your moral weight behind it. And I think, that is the risk that media must take. You must declare your position so that the people can assess where you come from, what your view point is, because we are not neutral beings, we are not apolitical beings, we believe in whatever end of the spectrum you may come from, right, left, centre, whatever it is, it must be a declared position. Our journalists are trained to do that. We might make mistakes when we do that, but at least there is transparency. That is what *Tehelka* believes. Instead of just X said this, Y said that our journalism proves that X is probably lying for this many reasons and Y is where the truth lies and I think putting moral weight behind a certain version of a story has really become the need of our times. Stories like that of Himanshu Kumar, Binayak Sen, Ajay TG and many of them in Jharkhand.

There are these endless number of cases where it is really the laziness of the media that the information has not gone out the way it should have been. I am going to end with two very quick points. One is the new media. The new media has a huge potential to protect us from the assaults we are facing because information can be shared in real time. We have CGNET and what Himanshu were doing, all the dalit and tribal networks to tell the stories without the mediation of anybody else and I think it is a very important tool. It can go viral across the world and I think it is a big safeguard. We must train more and more on the ground, more and more people to tell their own stories with the cheapest kind of technologies, so that at least the ground facts can reach larger audiences. But equally I think that the Internet has a very negative potential and that is something that we must brace ourselves against. I also mention the activist community itself and here I am going to speak out something that is very raw to me right now, but I think it is very symptomatic of the problems that we are going to face increasingly over time. It is about the negative power of the Internet and the fact that activists are speaking very rudely within the left fraternity itself.

I think everybody in this room would have been a victim of slanderous attacks, physical attacks, jailing and all of that from the right wing. When I said right wing, that's a very loose grouping of corporate positions, of communal positions and of status positions. I think that's the kind of assault one can understand. We have increasingly seen that in the dialogue that happened between Gladson Dungdung and Binayak Sen, it's just happened between *Tehelka* and infinite number of people out there who accused *Tehelka*, without fact, on a lot of things and I think that is what is happening, is an attempt by some to seen as being so pure. This left group of communities is beginning to erode our own base. We are beginning to erode our own desires to stand up for things. We are beginning to erode our own belief in each other and our own tenacity to stay with things. I am not going to go into the details of what is happening with *Tehelka*, but I really want to leave this thought with us. That is if we begin to outlaw everybody in our desire for purity, we will find that we can't even live in this world anymore. I think we must understand that first of all, there is a complexity to our battles and what we fight for on the ground is important. Above that there are many positions that are also fighting for the same freedom. Let's strengthen each other rather than eroding each other's strengths.

**SAMIUDDIN ILLIYAS NEELU**
*Journalist*

***I was helpless at that time because nobody was present where this incident took place. I appealed to them to not kill me, that I don't have any enmity with them, but have so with the superintendent of police only. If the SP has felt something bad or is upset by any news then they should take me to the SP office. I would try to clarify my position but they should not kill me.***

I am a staff reporter of *Amar Ujale* and a resident of Lakhimpur Khiri, Uttar Pradesh. A food scam took place in Lakhimpur Khiri where the ration to be allocated to the poor people under the PDS scheme was not allocated to them by the administration. It was either siphoned off to the mafia or the administration sold it outside. I exposed this nexus in the food scam and published it in my newspaper. The impact of exposing this scam was so intense that the CBI immediately started an enquiry. One IAS officer and five PCS officers were immediately suspended.

As a result of this, the administration was very angry with me and threatened me with dire consequences. They warned me that I should not publish any news of this nature in future. Ignoring their warning, I also exposed the nexus between police, administration and land mafia, misappropriating land belonging to poor people. I am still continuing my duty working as a fearless journalist, reporting issues of public interest.

I started receiving more and more threatening calls. I also got a hint that the powerful lobby was planning to implicate me in serious, but false cases. Therefore, I met state home secretary on February 3, 2005 in Lucknow. Further, I met DGP, accompanied by my friends, on February 5, 2005 in Lucknow. I submitted a memorandum, with all newspaper cuttings, and explained to him as to how the SP, N. Padmja, was threatening me, that I feared for my life. I requested him to inquire into the matter, transfer the SP from that district in the interest of a fair enquiry, and provide me security. The home secretary did not take the issue seriously and reassured me that nothing was going to happen to me. Contrary to this, what happened to me is as follows:

On the morning of 9th February, I reached Lakhimpur, went to my office and finished all my pending work till 10 30 pm. Later, I went out of the office with my colleagues After a short walk together, all of us dispersed and left for our respective homes As I proceeded towards my house, I didnt realise that policemen were following me on a jeep and three motorcycles. Suddenly, they stopped me, took my bike key and grabbed me One person got down from the jeep and put his revolver on my head At that moment I could not understand what was going on I thought that police were looking for some criminal and had stopped me by mistake

When I asked as to what was the matter and why had they stopped me, I was told that they were looking for me for some work "So don t worry and keep quiet," they told me Then they put me in the jeep, took me to the outskirts of the city and discussed something among themselves for a while. Following this, they took me near the railway crossing where one of the policemen threatened me "Today is you last day," he said as I appealed to them helplessly, to let me off There was nobody present at the dead of the night there I told that I had no enmity with them, that I did have a problem with the SP, but not with policemen I requested them to take me to the office of the SP if he was upset with me for any reason, and that I would clarify my position, but they should not kill me there

Again they put me back in the jeep and started moving towards the railway crossing but the gate was closed as some train was coming They blew the horn to call the gateman to open the gate because the train was late When the gateman was trying to open the gate, I was thinking that they would kill me that day Immediately I shouted, "I am Nilu, a press reporter and these policemen are trying to kill me so please help me" My voice was drowned in the dead of the night When the gate was opened, they took the jeep straight and stopped near a bush where they tried to compel me to write a suicide note which I refused to do Following further threats and intimidation, I wrote a suicide note and mentioned my family problem as the reason behind my suicide I again reminded them that only SP had an issue with me and they should have no hostility towards me I told them that if at all police wanted to kill me, the SP should herself come and kill me I also told them that I had already written letters to the human rights commission, the Press Council of India the DGP, the home secretary and the chief minister So when the enquiry would start, they would all be punished as well because the whole city knew about the issue and the tussle the SP had with me Finally, they informed and explained everything to their bosses changed their plan and decided not to kill me However, they kept me there till four o'clock and then took me to the police station where I was kept in a cell

Meanwhile, my family members had already started searching for me in different places, they had even called my office and friends They feared that some incident must have happened due to dense fog Some of my friends came to police station in the morning and were shocked to see me there I asked them to find out the charges against me According to the charges framed against me I was involved in trafficking animal items like crocodile skins, lion skin, horned rhinoceros and sandalwood They had made me an International smuggler overnight As I was sent to jail, there were a number of protests

staged in various districts, state capital, in Uttarakhand and in Delhi. The issue was also raised in UP assembly and legislative council.

SP's transfer order was issued but since she was very close to political leaders, her transfer was cancelled. My case was transferred to CID, which declared me Innocent and charged the police with handling the case in a careless manner. I repeatedly demanded that policeofficers be charged for kidnapping and attempt to murder, but to no avail. After that I came to Delhi to make a representation with the the Press Council of India. Since my application was already there, the PCI formed a fact finding committee comprising five members.

So, when a letter was sent by the PCI summoning the SP, she didn't turn up. The PCI sent three more summons but the SP ignored. Finally, the PCI sent a summon through the DGP, after which the SP turned up before the PCI which also summoned the DGP and home secretary. The PCI team also visited the area and took written statements of all members. In February 2010, the PCI passed five point ordinances in which it was strongly recommended that the state government should immediately provide security to me for five years. It also recommended that my security should be reviewed every six months. The PCI also recommeded that since SP's behaviour towards journalists was not satisfactory, she should not be posted in places where she may have to directly deal with the media. The PCI also made recommendations that the accused policemen should be transferred, the attacks on journalist should be taken up for discussions in the Parliament and state assemblies, the PCI and the respective editor should be informed in the event of the arrest of any journalist within 24 hours.

All these recommendations of the PCI were ignored and when I approached the press body, it expressed helplessness and advised me to move the high court. I went to the human rights commission which ordered a compensation of Rs five lakh to be paid to me and put on record that this offence was as grave as a custodial death. The NHRC also ordered an enquiry by an ADGP rank officer to monitor the conduct of SP, MS N Padamja. The ADGP, after trying to compel me to compromise, sent his report to the NHRC recommending the closure of the case, contending that there was no solid basis for this case against the SP, that I faded to produce any evidence due to my alleged absence. I submitted to the commission my side of the story and the NHRC asked the ADGP to produce "written statement of Mr Nillu."

I have not heen given any compensation as yet, the IPS and IAS lobby has united against me and even the NHRC has taken the details of my case off its website. I am still a victim and am continuously facing harassment and intimidation. I have told the NHRC, the police and the authorities that I am not going to compromise. This is not my personal fight, this is the fight of every journalist and for every journalist.



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**MAQBOOL SAHIL**
*Journalist*

***It was a hellish experience and the modes of torture inflicted on me during interrogation extended to putting a wooden roller on my legs, suspending me from the roof, caning my feet, besides officials regularly beating me. As I was unable to provide any lead to my alleged involvement in espionage, the intensity of the torture increased. I could not stand on my feet***

Sometime I wonder as to what was the reason for Mughal emperor Jahangir to recite that "*agar firdos daro jam, asto hamin asto hamin asto*" (If there is paradise on the earth, it is here, it is here, it is here) These days when we see Kashmir we can say "*agar dojak bane jam, asto hamin asto hamin asto*" (If there is hell on earth, it is here, it is here, it is here) The reason why I say this is because Kashmir today is heavily populated by armed personnel and security agencies There are hundreds of Kashmir policemen and more than two dozen intelligence agencies that are active here along with some of the resistant groups and militant organisations

How does a journalist work in this kind of scenario? I remember meeting Mr Martin Bell when he was working for the BBC TV as a war correspondent (now he is a member of parliament of UK) and he shared some of his experiences with me. He said that when he was in Vietnam, he was facing guns from two sides, the resistance forces of Vietnam and the US army He said that when he entered Vietnam, he started writing literally in favour of the United States of America and the US army because of allies. So the Vietnamese were unhappy and they used to accuse him of being a biased journalist. After some time he found out that the Vietnamese were being suppressed, killed and harassed by the US army, who were illegally occupying their land He then started highlighting this part and the US became his enemy However, he said, after a while, he started opposing both of them and both became unhappy with him. So, when I asked him to guide me about the role of journalists in Kashmir, he said he could not because there were over 70 sides (stakeholders) at that time and not just two. There were about 30 militant organisations, several security forces and police personnel having guns and weapons He said we had to find our own ways because there were too many people fighting with and amongst each other I would be by God's grace if one managed to survive while in that situation, he said

As far as my story is concerned, I was working with *Chattan*, a well known local weekly in Kashmir. I was working as a journalist and wrote many stories exposing human rights violations, fake encounters and bungling in the recovery of arms and ammunition by the security forces that would sell these arms back to militants again. Also, I did some stories about extracting money from the people by kidnapping and harassing their sons.

In January 2004, I was taken under detention from Badami Bagh area of Srinagar while coming out of the headquarters of the 15 Corps of Indian army. The then army public relations officer had given me a ride in his car so that I could collect the payment of a bill of my employer (Weekly *Chattan*) from his office. After detaining me, the policemen put me in an unmarked white colour gypsy car and took me to joint interrogation centre in Srinagar on the banks of Dal Lake. There I was told that I had been arrested by the CID, as according to them I was involved in an espionage network working for Pakistan. They charged me under Official Secrets Act and Enemy Agents Ordinance, which are non bailable and carry the death penalty.

I was arrested because many police officers were unhappy with me for my journalistic work. That is why they made a plan to target me. I had visited Pakistan on a proper passport and official visa along with a political delegation some time ago. This was made a basis for my arrest. They realised that I had visited Pakistan recently, and that I was a journalist who used internet and who could be targeted easily. Some pictures and reports which I used to send to various newspapers, like press releases, photographs of encounters, killings and other such mails were downloaded from my website and collected from my email.

Suddenly I was subjected to third degree torture without being asked a single question. They kept me blindfolded for three four days. They used to put some food in front of me to eat, but they didn't allow me to wash my hands and face, they did not allow me to use toothpaste to brush my teeth, neither did they allow me to go to the bathroom and toilet on proper times. I was put in a cell for four days and after that they brought me out and started questioning. They dubbed me as an active agent of ISI. They issued a statement that they had arrested a top brass activist of ISI, Sahil Maqbool, who was working under the garb of a journalist in Kashmir and they also claimed that they had recovered some sensitive documents from me. These sensitive documents comprised the invitation card of a relative in Rawalpindi whose daughter was going to be married. It was in my laptop bag. Everything was taken from me because I was a photographer and reporter. I was having a complete journalistic kit with me like camera, mobile phone and digital recorder and some other electronic gadgets and a diary.

It was a hellish experience and the modes of torture inflicted on me during interrogation extended to putting a wooden roller on my legs, suspending me from the roof, caning my feet, besides officials regularly beating me. As I was unable to provide any lead to my alleged involvement in espionage, the intensity of the torture increased. I could not stand on my feet. Other detainees would help me change clothes and eat. My house was raided thrice, and all equipments including a computer, books, CDs and diaries were taken away by the CID personnel, which have not been released till date. On October one, I was shifted to the central jail in Srinagar where I was kept for a month. A month



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later I was again taken to the interrogation centre and then shifted to Kote Balwal central jail in Jammu along with a Public Safety Act detention order for a period of two years The Jammu and Kashmir High Court quashed the detention order after one year I was brought back to Srinagar and lodged in an interrogation centre I was again detained under the Public Safety Act and shifted back to the Kote Balwal jail The process was repeated four times in 40 months till January 2008

During those 40 months in jail and under interrogation, I was almost cut off from my family I could hardly see my children and met my ailing mother after two years in Humhama interrogation centre My physically challenged brother would repair radios and TVs at home to feed my eight member family during my detention

In 2007, I was shifted to Amphalla district jail, where I was kept in a dark, solitary cell In the hot summer months of May June, July and August There was no fan in my cell and each 24 hours I was allowed only a single visit to the toilet located outside the cell For the rest of the time, I had to use a tin canister as a toilet and later clean it in the "main" toilet That was the toughest time for me, but it passed

Inside prison, I decided to read and write, as there was ample material available in the jail to read I started interacting with other detainees and each would speak the truth and honestly confess his crimes, if any, but I found that more than 80 percent of the inmates were innocent During my detention, I almost completed the scripts of seven books, including my jail diary "Shabistan-e-wajood" which was adjudged as the second best book by the France based Reporters Sans Frontiers In 2009 My other writings included a story collection, poetry and fiction, which are now in the process of being published.

The authorities were supposed to file a charge sheet against me in a court of law within 60 days of my detention but I was held without trial for more than 30 months When the courts quashed the fifth Public Safety Act detention order slapped on me, my case was presented before a sessions court in Srinagar The case is still going on and I have to attend the court every month

Finally my release came on 9 January 2008 But, by then I had lost all my professional contacts and it was like starting from the scratch again, after 18 years in the field of journalism All Party Hurriyat Conference (APHC) senior leader Shabir Ahmed Shah offered me to join Hurriyat Conference but I rejected the offer and started building up my career again to carry on my mission of seeking truth through courage as journalism stood for me always

This is a small story and I have been covering the conflict for 22 years now Kashmir is my story and there are dozens of stories like mine concerning many other journalists We have lost eleven journalists during these 23 years of conflict. Eleven journalist were killed either by the security forces or may be one or two by those renegade militant who were supported by the government itself, and many other have lost their limbs. Many have been arrested and detained We need to think about all these people today and take considerate steps to support them

**AJAY T G**
*Documentary Film Maker, Chattisgarh*

***When I was in jail, it was compulsory for every prisoner to parade in front of the jail administration every Monday and all the details were written on paper. It was only when my turn came and I read those papers that I came to know about the charges that I had been framed with. The main charges were under sedition and the Chattisgarh Special Public Security Act.***

On 23 January 2008, I was going to Raipur to attend a meeting. On my way I got a call from my home and was told that the policemen were asking about me and my presence was needed. Since I was about to reach Raipur, I decided to go back after attending the meeting. The policemen, however, took the phone from my wife and told me that I must come back immediately. I called my colleague Sudha and both of us went back to my house.

When I reached there I found that the entire residential area had been converted into a police *chhawani*. Policemen were standing all over the place with guns. They were searching my house. When I asked them if they had a search warrant they said that since they were there already, there was no need for any warrant. After nearly three hours when the search operation was completed, they told me that they had a search warrant under the Arms Act. They took me to the police station and also took my computer. At the police station they told me to sit in one corner. Five minutes later a policeman came with a blank paper and asked me to sign it. I refused and in turn they threatened me. I stood firm and told them to write something on it first. Afterwards, they wrote that they carried out a search operation in my house with my permission and then they made me sign it. They called me to the police station continuously for ten to twelve days.

On 5th May, I was on my way to get milk for my child and was stopped by policemen who were on a motorcycle. They told me to come to the police station immediately as an officer wanted to meet me. I tried explaining them that I was going to get milk for my child and would visit the police station as soon as I was done. They did not relent and took me to the station where my cellphone was taken away from me. Around 5 o'clock, they took me in a jeep and presented me in the court, handcuffed. In the court, even the

judge did not ask me anything and sent me to jail When I was in jail, it was compulsory for every prisoner to parade in front of the jail administration every Monday and all the details were written in papers. It was only when my turn came and I read those papers that I came to know about the charges that I had been framed with The main charges were sedition and under the Chhattisgarh Special Public Security Act

Here, I can say confidently that although the role of local media was biased, the role of the national media was very positive towards my case, specially that of *The Times of India*, *The Hindu* and *Tehleka* I am very thankful to people like Harsh Mander and Siddharth Vardharajan who highlighted my case in national news wrote many articles and thus built pressure on the government to take the a decision in my favour This mass support was the main reason that the state government did not frame serious charges against me One day the Chhattisgarh DGP, Mr Vishwaranjan, came to jail and met me and started talking about many things. He said that his father was a revolutionary and he himself was a revolutionary as a child He talked about Firag Gorakhpuri, who is a noted poet Then he asked me about Binayak Sen I said that Binayak was the president of PUCL Chhattisgarh He said that I was wrong and "Binayak is a Naxalite and PUCL is a fictional unit of Maoist" Then he asked me the whereabouts of Anup Singh I said that I didn t know where he was He, then, asked me about the connection between Anup Singh and Sudha Bharadwaj and he further asked that if they were married But I refused to give any more information He threatened to reopen my case and also promised that he would reconsider my case

Three days later the SP came to me with some papers and told me that I would be released if I signed them In those papers they had written a statement from me saying that I am a member of PUCL and I know Binayak Sen, who is a naxalite When I denied to own the statement the SP insisted that I have already confessed all this in front of the DGP At first I firmly refused to sign the papers but he returned again three days later with the papers which stated that I have some doubt that Binayak Sen has close connections with naxalites but I refused to signed these too They approached me in this way two or three times but I refused each time They kept me in for 90 days and finally presented me in the court The judge granted me bail on condition of visiting the police station every fifteen days to sign there and inform the police with all the details every time I went out of the state

This went on for near about one and half years. Every fifteen days I used to go to the police station for my signature on the register My work started suffering severely as I was becoming increasingly unable to concentrate on my work. I am a film maker and outdoor shooting is an essential part of my work but now I was unable to move any where independently In my petition, I also explained that even after one and half year the police had not been able to file any chargesheet against me But the judge told me that I was facing sedition charges and my presence was essential for the case Instead of giving me any relief in this case, the judge said that I had to go to the police station every month and it was to continue for four years After four and half years, I got an invitation from England to present a paper in a seminar Again, I put up a request application in the court explaining that this seminar was very important for me because it was related to

my work. This was also refused and I was told that due to the nature of charges that I was facing, my presence in the country was essential and it was only academic activity that I could got for abroad.

Then I moved my case to the high court. There my advocate told me that the judge had agreed to give me permission but somebody had to give guarantee. I was confident of getting permission this time. But when I saw the order sheet, it was written there that I was facing serious charges and the enquiry was going on and, therefore, they needed me to be present in the case. Thus my application was rejected on this ground. The I decided to approach the Supreme Court and the matter is still pending.

I want to draw your attention to the fact that when my bail application was rejected by the court, all the local Hindi newspapers reported my case as a case in which the court had rejected the application of a naxal sympathisers to go abroad. Local media also spread this propaganda that I was pro naxalite, was providing sensitive information to them, had good connection in the foreign countries and was making documentaries for them. The local media is so biased that they do not want to listen to your story. They (the local media) is reporting only the government side of the story and then presenting it as news. Their bias is so deep that the only good news they report is about two persons — one is Raman Singh and the second person is Naveen Jindal. There are so many social workers doing fantastic work in Chattisgarh but the media seldom bothers about them. I have heard that Jindal has already started a Law School and in this school they are discussing Sedition Act and other such laws so that they can learn how to crush people who are opposed to their projects. Jindal School is also organising seminars on human rights. I can tell you what they are doing in Temsha or Tirmor area where a number of farmers and tribals are dying due to road accidents and the percentage of death is much higher than the death of Baster and Dantewada. It is surprising that all these accidental deaths are frequently caused by Jindal company's vehicles.

In Delhi they are discussing sedition and death penalty, but in practice they are killing farmers and tribals in accidents and otherwise. And this is what they call human rights. In this context, I have made one documentary and the title of this documentary is *And here Se Pehle*. In this documentary you can see how Jindal has taken the land of these tribals without giving anything to them in return. Now, the central government (Minister of Environment and Forest) has given permission to Jindal to run its activities which were earlier rejected by the same government. The ground reality is that these poor farmers whose lands are illegally occupied by Jindal, are planning to protest against Jindal. This is the real picture of what Jindal is doing in these areas. When we see the names of human rights organisations attending seminars by Jindal's college, we feel very sad. We need to understand the true nature of people like Jindal, their activities in tribal areas and their definition of human rights.



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# Session 9

# DEFENDERS IN CONFLICT STATE

**KOPA KUNJAM**
*Social Activist, Chhattisgarh*

***In the meantime, Singaram massacre incident happened, where they gunned down 18 people in a queue out of which two people survived and four women were raped. I visited this place along with Tehelka journalist Ajit Sahi. The government ordered an inquiry because the local MLA had visited this place. There I met a naxalite leader, Saritu, and she told me that, "Kopa if you are taking them for justice, I will not stop you, but you will not get justice either in high court or Supreme Court because till this date tribal people have never got justice.***

In Chhattisgarh, the *Salwa Judum* campaign is supported by Chief Minister Raman Singh and also by the Congress, which is the opposition party. This movement was originally started from the villages of Ambedi, Karkeli and Katru. The literal meaning of *Salwa* is peace and *Judum* is to add people, that is, to add the people for peace work, but the government is doing just the opposite. The government is not helping and protecting the tribal people but is planning on ways to kill them. If the *Salwa Judum* campaign was really initiated by people, then it could have continued for longer and we would have found peace long ago in the Bastar region. As soon as the development programme was finalised and the funds started coming on behalf of the *Salwa Judum*, the people who were really connected to this movement, the tribals, were ignored and non tribals, especially, urban people who had little to do with *Salwa Judum*, suddenly became its leaders.

The government appointed the village youths as SPOs (Special Police Officers) and also promised them a salary of Rs. 3000 per month. In reality, the government used them. They are being asked to provide information about the naxalites, and in failing to do so they are being tortured. Apart from that, the policemen are also forcing these SPOs to enter villages and recognise anybody who looks suspicious. So many people have been arrested in this process. When this campaign started, I had spoken to Mahendra Karma (Congress leader and founder of *Salwa Judum*) and warned that we had already tried this

two times earlier and were familiar with the results. He, however, was reassured of the government support.

On behalf of the *Salwa Judum*, thousands of tribals were either killed or their houses were burned and they were forcibly made to migrate from their villages. I was threatened when I refused to join the campaign. They warned that anyone who did not join would be considered a supporter of naxalites and his/her house would be burnt down. Rs 500 fine slapped against him/her. Everybody was afraid, so I decided to join *Salwa Judum* but right after two months I withdrew as I found out that they were terrorising villagers on mere suspicion. I told Mahendra Karma that I would not support this kind of work and I got separated from this movement. As I disagreed with *Salwa Judum*, the Matwada incident occurred, where policemen killed three villagers and blamed the naxalites. Next morning, when I heard this news I went to the police station, which is not far away from my place, and spoke to their family members. They told me that the policemen were the real culprits; so I met some of the journalists with these people and explained everything. The inspector who was involved in this fake encounter is right now in Dantewada Jail.

The *Salwa Judum* supporters blame me, make allegations against me that I am a naxalite supporter. In the meantime, Singaram massacre incident happened, where they gunned down 18 people in a queue out of which two people survived and four women were raped. I visited this place along with *Tehelka* journalist Ajit Sahi. The government ordered an inquiry because the local MLA had visited this place. There I met a naxalite leader, Sarita, and she told me that, "Kopa if you are taking them for justice, I will not stop you, but you will not get justice either in high court or Supreme Court because till this date tribal people have never got justice. Only paper work will be done but you will not get justice." I told her that I would try but I really could not manage to get justice and if she was ever to ask me what happened, I have no answer to give to her.

Chief Minister Raman Singh is repeatedly making a mistake and thinking that through *Salwa Judum* he would be able to maintain peace in the entire Chhattisgarh, which I personally think is impossible. Hence, I and many other alleged naxalite supporters met the Chhattisgarh government official and complained that the health services are not functional in many villages. Aanganwadi is also not working. So many schools are also not functional and old age pension scheme is also not available. They said that all these schemes were functioning and if anyone raises their voice against the inactive system, discrimination or atrocity, they would be branded as a naxalite supporter. After that a meeting was organised at Raipur and I met Himanshu who told me that he had taken permission from Home Minister P Chidambaram for a *jan sunwai* covering the entire Bastar region because a lot of violence has occurred in recent times. The SP then called me and said that the whole Baster region was like a golden bird and I should stop supporting Himanshu. I told him that Himanshu was not even a tribal and that he was fighting for tribal people and against the discrimination. That being a tribal youth it was my duty to support him. I was even offered a sum of one lakh rupees and an SUV which I rejected and supported the *jan sunwai*.

The SP said I was like a human rights activist who did not say anything when naxalites

killed people, but made a lot of noise when the government killed naxalites. He even threatened to shoot anyone who participated in the *jan sunwai* and to declare him a naxalite. Next day they called me again and told me that the DIG wanted to meet me. I and HRLN advocate Alban Toppo went there and waited for a long time after which we were told that the SP wanted to meet me at his residence. They took me in a closed vehicle and turned their vehicle towards Bijapur. At that point I called Himanshu and told him about this. He asked me to get off the vehicle. When I asked them to let me off, a fight started between me and the policemen. They started pushing me in the vehicle. I overcame them and told them if they wanted to arrest me they should take me to the police station.

After that they took me to Bhairamgarh and asked me why I was participating in the *jan sunwai*. They also asked me about about my relations with Himanshu Kumar. They tortured me and my colleague (advocate Alban Toppo) entire night till I lost my consciousness. They presented me in the court later and made me reluctantly sign the charge sheet. They did not even let me meet anyone so that I could get some support.

All I want to say is that I am a tribal man and I am not afraid of death. All I want for my struggle to succeed is your cooperation.

**DAYA MANI BARLA**
*Social Activist, Jharkhand*

***Our ancestors have already given their lives for this land. Therefore, we have decided we will not let their sacrifice go waste. Our new slogan is, "we will neither give away our land nor our life", and we are confident of winning this battle.***

I want to share a few things about Jharkhand and what is going on over there. Jharkhand state was created in 2000. But before 2000 we had been demanding a separate state for tribal people and were fighting for this. The reason we were fighting for a tribal state was because the development of Jharkhand is well connected to the development of tribal culture, their language and their resources.

After formation of the new state, the state government has displaced 80 per cent of Jharkhandis from their land only for the sake of development and within that only 4.5 per cent have been relocated. The rest of the people are wandering in big cities for their survival. As soon as the new Jharkhand state was formed, the corporate houses announced that they are going to conduct a fashion parade in the state. We strongly protested against this corporate sponsored fashion show. We argued that this state was created for development of tribal people, not for the corporations. We demonstrated where the fashion show was being organised and they called the police. When the police came, they tried to disperse us, they even beat us and threw us in a police jeep. This was our first protest against the corporatisation of Jharkhand. We also shouted slogans saying we will not make this state available for corporate houses. We all know that Jharkhand has almost completed ten years. In these years the state government has signed 'memorandums of understanding' with 104 corporate houses. The real actors behind the 104 MOUs with these companies are only politicians, bureaucrats and the mafia. They have done everything for their own benefit. All the companies that have signed a memorandum with the state government are trying to displace us from our land. We are trying to protect our land and for this we are protesting against this corporate move.

I truly do not understand why people are saying that human rights violence is not prevalent in Jharkhand. Being a human rights defender, I feel that in the present situation all the Jharkhandis are ready for a movement and that they have decided that they will not give their forest, land and water to these greedy corporate houses. I can proudly say

that out of 104 companies, only three companies Electro Steel Plant, Jindal Steel and Abhijeet Group have managed to set up base in the state. Even these companies have managed this because they successfully cheated the Jharkhandi people. The areas like Saraikela Kharsawan, East Singhbhum, West Singhbhum, Gumla and Lohardaga where maximum MOUs had been signed, I can say with pride to date no company has taken any land from these areas and have not dared to start their work because of the resistance from the Jharkhandi people. They have decided that they will not give their ancestral land to these greedy corporate houses.

I want to share with you exactly how we are protecting our land. When I was protesting against the Mittal group, I got a call from an unknown person saying that if I will create any problem in their work then I will be shot. I thought about how to respond to this call. Again, they threatened me and then I said that you told me the same thing three months back and I am still waiting for your bullet and am ready to accept it but will not stop meeting with the villagers. I will do my work without any fear and will continue giving my support to the villagers. When I went to the police station to register an FIR complain against the threat call, the police inspector of that station countered me by saying why are people protesting against developmental work which is essential for the government and without development work no tax will be generated, and it will be difficult for government to function. I simply asked him to perform his duty, which is to register aFIR.

You may be aware that on 6th December 2006 some untoward incident took place at Kathikund where our colleagues Munni Hasda, Murmur ji and others were fighting against RPG group. When the police registered the FIR against these people they were normal criminal cases but overnight seven more criminal cases along with terrorist acts were charged against them. In East Singhbhum our colleague Kumanchand Majhi was fighting against Bhushan Steel Company and there was no news of it in the media. They have repeatedly said that they will not allow the establishment and functioning of this company and are also requesting the company officials not to work. When the officials insist on working and someone decides to present a shoe garland to the officials it immediately becomes news. The complaints that are registered against these people are normal initially, however they are later framed into charges of extremism'

The present situation in Jharkhand is different as compared to Bastar and other parts of the country because now we have given one slogan that we will not give a single inch of our ancestral land to these corporate houses. We have learned so many things from the movement of Koel Karo. We were fighting against the displacement at Netarhat and after that we are also fighting against the displacement all over India. Recently government has started Operation Green Hunt against extremists in Saranda area because government has already given permission to companies like Essar, Tata, Mittal, Bhushan and the Abhijeet group for iron ore mining and these corporate houses are pressurising the government to vacate this land as soon as possible so that the mining may begin. The government is trying their best to vacate this land but they have not been successful. As a result they are now saying that in these areas extremists are very active and they are creating problems in the development work and are even being supported by the villagers of

Saranda. Besides this the government has already given permission and provided police force to private companies to vacate these 34 tribal villages as soon as possible but these companies are unable to use force to vacate the villages. Our two friends Mangal Hombaga and Soma Munda have been killed on the pretext of getting the land vacated by the government. In the Saranda encounter, the police is saying that they used firing but the Jharkhand IG is saying something else, that there was firing from the other side. Any one can understand that they deliberately killed these people. We made a demonstration against the government and these killings. Recently Home Minister Mr. Chidambaram visited that place and promised that a large amount of development work will soon take place in the state and we are desperately waiting to know exactly what kind of development work is going to take place. All I can say is that the government only has one intention, that of vacating our land for corporates.

I want to draw your attention to the fact that we are fighting to protect our land from these companies but now the government has given a new direction to these companies of purchasing land directly from the people and these private companies are now taking help from land mafia active in this area and the mafia is using all means possible even in the form of threats and are forcing tribal people to sell their land and those people who are not selling their lands are being killed. Mr Jindal, who is a Member of Parliament, is trying to open a new steel plant in Patratu area but the way he had adopted the policy of grabbing land is very shameful. Being a parliamentarian, he and his goons are compelling these tribal people to sell their land and anybody opposing them is openly threatened by goons who are killing those innocent people. For the Patratu plant he had purchased 300 acres of land from Birla in order to produce 600 million tonnes of steel. Since that much land is not sufficient to produce 600 million tonnes of steel they want more land to fulfil his target and for this work he wants to vacate more villages. The surprising thing is that even the administration is helping these people. Nobody can call a meeting in these villages because Section 144 of CrPC is already imposed in this area, and if anybody violates this then the administration intends to take strong action against such persons. In this way the whole administration is fully supporting the companies and the mafia. We are fighting for our rights and earlier we had said that we will give our life but we will not give our land. Our ancestors however have already given their lives for this land and therefore we have decided we will not let their sacrifice go waste. Our new slogan is we will neither give away our land nor our life and we are confident of winning this battle.

In Jharkhand, we are fighting against corporate goons on our own and have no advocate available to fight our case readily. Recently Jiten Marandi the cultural activist was charged by the government of being a Maoist sympathiser and he is now facing a death sentence. We are searching for advocates to defend his case but we could not find anyone and I am facing charges in four other cases as well. What is disappointing is that we are fighting alone and no advocate is available to even suggest us anything. We can see the way the level of human rights violation is increasing in our state and we know that we will continue fighting for our rights but we do not understand legal complications. I am hoping HRLN can help and support us in this field.



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**KAILASH MEENA**
*Social Activist, Rajasthan*

***Those, whose duty it is to protect democracy are now being a threat to democracy because people are losing their faith in these people. The situation is very tense because they have created insecurity in this area. Due to our movement, the local administration is so furious at us that they are calling us naxalites and creators of problems in the development work.***

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We know each other because we all have faced similar kinds of problems or victimisation in our life. So my story is not new for you and yours is not new to me. I want to put three examples in front of you. In the first example, I want to explain the real truth about how our judiciary is functioning. Through demonstration in the state of Rajasthan, we forcibly seized two trucks which were loaded with very dangerous explosive items and the court ordered that since the culprit had already confessed their crime, they should be released immediately on the penalty of Rs. 1000 and if they were unable to deposit that amount then they would be detained for two months. Further in his order, the judge said that they were poor people and if their trucks were seized then they would face economic loss, the trucks being their sole source of income. Therefore their trucks should be immediately released and all the explosives seized from these trucks were to be immediately destroyed. When I enquired through RTI about the place where the explosives were destroyed, no one could give me a satisfactory answer.

I have been fighting against illegal mining in Rajasthan since 1995 and in this context I filed a PIL, on behalf of PUCL, against the illegal mining. In 2010, I got a positive judgement in my favour prohibiting illegal mining in these areas. The Supreme Court also gave its direction to the administration but the administration did not do anything to stop the illegal mining. When we saw this we decided to expose the nexus between the mining mafia and the administration, we were threatened against this but we did not deter.

Once during that time we were all coming from the field and suddenly we saw a police vehicle parked in the middle of the road. They stopped our vehicle and surrounded it without saying anything. These police officials then started abusing us and beating us up. Thereafter, they took us to the police station and again beat us. There were two young

girls in the PUCL team who were with us at that time. The police showed us their real face that day and detained these girls in the police station for the entire night. I want to ask you, since so many law scholars are present here, that on what basis can one force un nor girls to stay at the police station for whole night? The next day we conducted medical tests on these girls and also tried to register FIR but to date no FIR has been registered.

Before this incident, we were sitting at a dharna with some ex army officers and six dalit women against the mining. Our demand was to protect the land for our cattle feed. Our demonstration was peaceful, even then the police used excess brute force on us. When Himanshuji visited that place, Kavita asked me to show him around. When we were visiting that area, the SP of Jhunjhuna district called me and started enquiring about the man with me. I told him about Himanshu Kumar, that he was a Gandhian and a lot of injustice had been done to him. The SP threatened to stop this investigation with him. I went ahead with our investigation. Himanshuji visited the area for three days after which we organised *Kisan Swaraj Yatra* against mining. Since that day we are directly fighting against administration. They have filed so many charges against us. In addition, we saw in the villages that on an average, three people die due to illegal mining in a month, and their houses are either broken or destroyed. Instead of protecting these helpless people, police are doing the opposite. We have authentic evidence to show as to how the police are taking money and playing with the lives of people. If somebody dies due to mining work, then the police forcibly give three lakh rupees to dead person's relative and tells them not to inform about the death to anyone.

Now the situation has deteriorated further because the mafia has called so many hoo ligans from outside who have created a sense of fear among the local people. We insist on intensifying our protest without fear at a large scale. The SP once called a meeting where all mining mafia was present. Without listening to anything from our side, the SP threatened us of serious actions against us. Those, whose duty it is to protect democracy are now being a threat to democracy because people are losing their faith in these people.

The situation is very tense because they have created insecurity in this area. Due to our movement, the local administration is so furious at us that we are being labeled as nax alites, creators of problems in the development work. The reality is that we are protect ing our land and rivers, instead of commending and supporting, the administration is against us. We have made representation with the ADG in Jaipur regarding this. The ADG called the local SP who told him that "Kailash Meena is a blackmailer and he is the real culprit." Our location is very close to Delhi, only 350 Km from here, and we are fighting against this powerful mafia who are the real enemy of democracy and who are trying to destroy it. In this situation we have to stand united and fight against these people otherwise our democracy will be destroyed. We are here from different parts of the country and the situation is pathetic everywhere. If we show our unity at this time, then democracy will be restored and we can protect the common man from these types of atrocities, or else it would be difficult to save people and democracy.



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**HIMANSHU KUMAR**
*Social Activist, Chhattisgarh*

***I just want to say that if farmers in India who want to protect their land and are fighting for their land, and if the government is not listening to anything and is using its power to crush their movements, then the government is giving clear signals to the farmers that their land can not be protected. By doing this, the government is compelling these people to tilt towards naxalism.***

Seventeen years ago, I went to Dantewada following Gandhiji's belief that the real India lives in villages, and young people must go there to rejuvenate them. The villagers gave me land to build my ashram. Under the Fifth Schedule, the *gram sabha* was empowered to do so. But the government demolished the ashram in May, 2009, sending a force of 1,000 policemen and an anti-landmine vehicle. That is when the *adivasis* finally acknowledged that I was like them! My home was also demolished.

In the forests of Dantewada, people live in tune with nature. Natural justice prevails there as there is no police, no crime. I went to Dantewada a month after my marriage. My wife and I built a hut without any walls, just a roof. I would leave my wife to travel all over Madhya Pradesh, for five to six days at a time. She never felt afraid.

When we campaigned for the release of Dr Binayak Sen, we also wanted an end to *Salwa Judum*, the release of all those in detention under the Chhattisgarh Special Public Security Act, and the scrapping of the the Act. Nothing happened. Now, in fact, the Act is being used against all villagers. "You gave water to the Maoists, you showed them the way – you too are an accused," this has become the norm for authorities to harass and intimidate tribals.

This is happening everywhere, not only in Chhattisgarh. For example, I had visited the 'illegal mining' area of Rajasthan and found that all the businessmen there were from outside the state and they were able to purchase these mountains after giving bribes to ministers. Their main motive is to make money and towards this end they are digging 1000 feet in the mountains and then detonating the area. The houses of these villagers have been destroyed, their agriculture fields covered with stones and even their animals

have been killed due to these heavy blasts. In addition, when I visited the area, I saw that the entire atmosphere was covered with dust which was directly affecting the lungs of people who had developed various health problems due to this. Social activist Kailash Meena's younger brother died from silicosis.

During my visit when I was interacting with these people, I advised them to fight in the Gandhian way. They told me that when they did satyagrah in a peaceful manner against the mining, the administration framed them in a false rape case and arrested all 74 people and put them in jail. It was very surprising to know that all 74 old people, even some women were alleged to have raped one woman.

In my previous meeting with these people, they told me that one person who had been framed in a false case from this village had been in the army and had received prestigious bravery award, Vir Chakra, for the Kargil war. And when these people were hiding in the jungle, this man, who got bravery awards, was so frustrated with the system that he said that he wanted to become a naxalite. I just want to say that if farmers in India who want to protect their land and are fighting for their land, and if the government is not listening to anything and is using its power to crush their movements, then the government is giving clear signals to the farmers that their land can not be protected. By doing this, the government is compelling these people to tilt towards naxalism. Therefore, you can imagine just how bad the situation really is if a soldier who has won many bravery awards wants to become a naxalite. His only fault was that he wanted to protect his land from the government and multinational companies. Wherever we are fighting, we are fighting not only for the rights of poor people, but also against the injustices. That is why the government is labeling us as trouble-makers, and hence anti-nationals.'

This meeting is very important to us because we are gathered here from different parts of the country and are sharing our bitter experiences with each other. After hearing the experiences of many speakers, I am able to conclude that we are fighting within our own sphere and we do not have any knowledge of any movement or fight that is going on in any other part of India. This way we are not helping or supporting each other in a manner we should. Now we know that if activists in Punjab are fighting against any injustice or against the atrocities committed on human rights defenders, they are unaware of a similar kind of struggle in Kashmir, and similarly the activists fighting in Kashmir do not know much about the movement in Punjab. This story is the same all over India. To remedy this, HRLN is trying to develop a kind of mechanism which attempts to connect all activists and their movements so that they know about each other and support each other in a time of crisis.

In the present scenario we are basically fighting against the rich and influential people who are trying to establish their hegemony upon the poor and marginalised section of the population. This way they are committing atrocities against these people. In this continuous struggle we have decided to give our support to the poor and marginalised and therefore our fight with the system is going to be unavoidable. Colin and HRLN are trying to give all kinds of legal support to all the human rights defenders.



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**ZULAIKHA JABI**
*Journalist, Chhattisgarh*

***Since I could not find a proper place to stay in Raipur for the last two years, I took up a place which is 20 minutes away from there. Still my place has been secretly searched twice. My window was found broken one day and all the important documents were stolen. When I registered an FIR against the police, they did not do anything.***

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I want to discuss the Jashpur and Sarguja belt of Chhattisgarh. Under the new economic policy, the government of Chhattisgarh has selected the whole area of Jashpur, Manendragarh, Chirmiri and Raigarh, under the belt of Sarguja zone.

Recently, we went there for fact finding because one retired CRPF person was killed in an encounter with the police. We found out that the reason for his death given by the police was that he was staying in the Naxalite villages. After seeing his body we need to question as to whether anybody is safe, whether it be a police man or an army man and also who is the real Naxalite? Due to our wrong policies, our country has become a factory of terrorism. Everything is true- whatever we are listening to today and whatever we will listen to tomorrow. People everywhere in India are fighting for their rights and fighting against laws such as AFSPA and the Special Security Acts, whether it is in Manipur, Chhattisgarh, Gujarat, Jammu & Kashmir, UP, Maharashtra or any other part of India. Even those areas in the country where there are no such laws like special security act and AFSPA, the people of these areas are fighting against the state to protect their life and their resources in one way or the other. I want to say that nobody will come forward to save Zulaikha, Iftekhar, Irshad, Faizaan and Imran, when these people would be attacked.

I live in Chattisgarh and am a social worker there. Due to my profession I face a lot of problems. Some of my well wishers ask me why I work in this field. They say that earlier it was better when my work was limited to Muslim women and their affairs. I told them that I am just doing my duty as a social worker and cannot differentiate between the human rights of Adivasi women and Muslim women merely on a religious basis. I am

a state committee member of PUCL. The Home Minister of Chhattisgarh has given an interview in the newspaper and has alleged that the Chhattisgarh state unit of PUCL is providing arms to all the Naxalites in the country. In Raipur, the president of the Press Club, Dr Lakhan Singhji who is very close to us, asked us, why is that if a terrorist kills people then you do not say anything but when a policeman kills someone then you al ways raise your voice. We asked him to advise us of one instance in the last five years when we have ever made a statement saying that whatever is happening in the state is very good. When Linga Kodopi was arrested, some of my journalist friends advised me that PUCL should say something regarding this because he was arrested while he was taking money for ESSAR. I asked them whether they still believed every word that the police told them. This is, indeed, a very common trend in India that the police present innocent people as victims in the form of terrorist or Naxalites. You cannot trust even a single word of the police without an investigation. The whole area of Jashpur zone spans across 6093 acres and what is surprising is that the government has already signed a 'memorandum of understanding' with different companies for 6023 acres of land such that only 70 acres of land is left. The government needs to be questioned that is 70 acres sufficient for any district?

When the Employment Guarantee Yojana campaign was started, a number of journal ists and students from all over India and even Jean Dreze participated in it. They covered Delhi via Chhattisgarh and finally reached Bihar. I was there because Jean Dreze was leading this campaign. When we reached Balrampur the police attacked us. In this attack the police broke my knee. We tried to find out the cause of the attack which took place in Balrampur district, which is a newly formed district, but the SP, Mr SRP Kalluri, said that he was not there when the incident took place. But I was a witness of the attack and know that he was involved. As I am associated with many human rights organisations from all over the country and with violence against women and state prison at the na tional platform, I face a lot of harassment by the government due to my involvement in these campaigns.

Once, when we were travelling to Dantewada from Raipur to attend a meeting, the po lice stopped our vehicle and said that all the papers of this vehicle are fake and we could not go ahead. When we decided to take the bus they removed the bus key and told the driver that Naxalites were sitting in your bus and they would only return the bus key if he made us get off the bus. In another incident, one day early in the morning an IB officer came to my house pretending to meet me. But his real motive was something else as he had come at an awkward time of 6 o'clock in the morning. Since I could not find a proper place to stay in Raipur for the last two years I took up a place which is 20 minutes away from Raipur and still my place has been secretly searched twice. My window was found broken one day and all the important documents were stolen. When I registered a FIR against the police they did not do anything.

I have been working with children on gender issues and also provide training to them. Earlier the government used to call me as faculty for gender training but they have stopped that for the last four years. There is another allegation that when Binayak Sen was arrested I was there with him at the police station in Bilaspur. It was merely a coin



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cidence that we were there at the same time. So after his release many journalists called me to get a piece of the story, however, I told them that I am not a personality to provide you with information about his release.

I agree with what Ajay TG has said about the local media as I come from the media profession myself It is unfortunate but also true that the media is biased towards human rights activists and their movement I stay in a state where the police control room uses the letter head of the Press Club of Raipur for government news and this news comes in the newspapers. Due to all this we decided to form a movement with the help of 32 organisations to save Chhattisgarh We collected 10 lakh signatures through this movement and filed it in Vidhan Sabha to procure government support but to date we have not received any response from the government

In Sarguja district, a tribal girl was raped and killed The police, however, are telling a different story of the girl being a Naxalite and that she was killed in an encounter When people protested against this statement the government suspended all the police officials who were involved in this fake encounter and also announced that they would give two lakh rupees to the victim's family However they did not accept that she was not a Naxalite We decided to meet the Governor, with a journalist delegation regarding this case as well as other cases and present our case to him Unfortunately, we have not succeeded in meeting with him as of yet

I can only say that the Chhattisgarh government is causing harassment in a planned manner in the state First the yarrested Binayak Sen and then they compelled our close friend Dr Lakhan Singh to pay Rs 1,79,000 in a case only because he helped us a great deal during Himanshu's campaign in Dantewada to raise public support against the arrest of Binayak Sen. Thus, the government is doing its best to create a divide within the media fraternity

# Session 10

# ATTACKS ON TRADE UNIONS

**GAYATRI SINGH**
*Lawyer, Mumbai High Court*

***In one instance the judiciary stated that 'you have created a law and order situation, therefore, you should go behind bars'. The same judiciary, however, is shockingly silent on the issues of law and order situation created by the management and by the police. How do we deal with the prejudices of the judiciary and the problems that arise from the legal judgements that come out in such cases?***

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This session is on attacks on trade union activists and I think the general feeling is that compared to other conflict zones, where people are repressed and tortured, the situation for trade unions is not that bad. We have to divide the assault situation in the country into two parts. One is in the rural areas and the other is in the urban areas. While the situation in the rural area is bad, the urban area situation is worse. If you compare the condition of organised workers and unorganised workers you will see that their situation is equally bad.

Once, I had someone from Nasik who came with a woman who was badly beaten. It was not really related to the trade union activity, but they were opposing the thermal power project of Indiabull, when they were picked up by the police. The woman picked up belonged to a village and is the sarpanch of that village. She managed to oppose a project and unite all the people in the area in the absence of any organisation. The police picked her up for this, beat her up brutally, and threatened to rape her. No person or organisation was willing to come forward to help her.

There is a case of students who were targeted during their examinations. Young students were picked up from their exam centres, handcuffed and the principal did not say a word about the handcuffing. Now the case is in the high court, where we have challenged the handcuffing. If it is a big and sensational case, the media is interested in it, but if it is regarding the beating up of an activist, then they do not show any interest.

As far as an urban centre is concerned, the attacks on activists in a city like Mumbai are shocking. I was a part of a trade union movement while working among the textile workers. We were attacked when we were trying to prevent the machines from factories being

taken out. I was there and I saw that the factory owner had called local goons for support and these goons beat us up very badly. We wanted to take action against them but one judge said that Gayatri Singh should either work as an advocate or a trade unionist, but should not do both simultaneously. If she is doing that, then the court cannot do any thing. Such is our judiciary.

I think you know about Jaitapur where a huge struggle is going on. I am diverting from the trade union session to some extent but it is pertinent to what is happening amongst trade union activists, because when we activists try to organise meetings the government imposes Section 144 of CrPC. Every other week a new notice was issued stating that activists are not permitted to participate in any form of gathering. When one particular activist filed for anticipatory bail in the high court, his plea was refused although he had a right to ask for bail. This was then taken to the Supreme Court where he managed to get anticipatory bail. But in the case of trade union activists, similar situations have arisen where organised workers are fighting for their right to organise, right to form an organisation and a right to form a union, which is the most basic right and which is being denied with the use of penal provisions.

Section 144 is being imposed in industrial areas where workers are protesting. We have cases filed against activists where they are picked up repeatedly and put behind bars, the situation is such that workers who go for work to earn a living, find it unbearable to keep reporting to the police station and eventually drop out of the movement because of their financial situation. Criminal provisions under the IPC and the CrPC are being put into effect on the trade union activists in areas like Mumbai, Pune and Nasik.

We have many such instances in Mumbai where workers of large factories are being denied the right to even form a union, by targetting the activists. They are issued show-cause notices by the company. The other effect is the economic strangulation of a worker, struggle or being active in the union, is to strangulate him financially. So in the case of Force Motors, which is a big company in Pune, the management issued show cause notices to 200 workers saying that production had been drastically reduced and therefore no wages would be paid. As a result, for two long years the workers were without wages while they reported day in and day out. The situation is not just limited to Force Motors, but everywhere it is the same phenomenon.

Under our Constitution the fundamental right to form an organisation/association is being taken away. The right to assemble and the right to have meetings are also being taken away. All this is a result of what rights the judiciary believes should be taken away. That is why I think we should come forward and critique the judiciary, which raises issues of this nature and says that workers have no right to assemble. In one instance the judiciary stated that 'you have created a law and order situation, therefore, you should go behind bars'. The same judiciary, however, is shockingly silent on the issues of law and order situation created by the management and by the police. How do we deal with the prejudices of the judiciary and the problems that arise from the legal judgements that come out in such cases?

The second aspect is something in which we have been successful to some extent. In a city like Mumbai, contract workers were trying to organise themselves and they have



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succeeded because we have been able to get people from outside the trade union movement. Getting people from different sections of society, whether they are democratic rights organisations, women's rights organisations or human rights organisations, helps to draw attention to these issues. It pressurises the government into taking some positive action. Two workers were very badly beaten because they were trying to form a dock workers' union located in Mumbai and controlled by Mr. S.R. Kulkarni. They were trying to form a union in JNPT which is in the outskirts of Mumbai and the goons of that area tried to suppress the movement by physically attacking those activists who took the initiative. Immediately, a team was formed consisting of various human rights organisations and journalists. A report was also prepared which was circulated not only to various authorities, organisations, individuals and trade unions within India but also to various authorities of international agencies and the support was generated out of that. So whenever there are such struggles taking place, we need to react and bring it out in the open so as to get support from different sections of society.

**SANTOSH RAI**
*DTC Trade Union Leader*

***At present about 16,000 contract workers are working as either drivers, conductors or sweepers. The situation became worse when blue line buses started to be considered as the killer bus line in Delhi and due to public pressure, the Delhi government decided to ban all blue line buses. The DTC management then hired a large number of drivers and conductors on a contract basis. Generally, these drivers are uneducated and come from remote areas and are required to report at their office in time***

We have discussed how workers and trade union activists are facing a lot of difficulties created by the company and also that they cannot form any type of workers' union in the Maharashtra region. I am the president of DTC workers union and it is our bright and clean buses that are operating on Delhi roads although the government is taking the credit that they have changed the Delhi transportation system.

I want to say something about DTC management, government policy and permanent workers and also about the large number of contract workers who are working on a contract basis at DTC. As it is a government organisation, the management of DTC does not accept contract workers as members of the DTC workers union. However an important point to note is that the DTC itself hired all these contract workers but they are not receiving minimum wages which is fixed by the government at around Rs 6500 per month in Delhi. At present about 16,000 contract workers are working as either a driver, a conductor or a sweeper. The situation became worse when blue line buses started to be considered as the killer bus-line in Delhi and due to public pressure the Delhi government decided to ban all blue line buses. The DTC management then hired a large number of drivers as well as conductors on a contract basis. Generally these drivers are uneducated and come from remote areas and are required to report at their office in time. If he is unable to take the bus back during duty times then he does not get that day's wage. Therefore, although he worked the entire day, management would not pay him if he brought the bus back late. However, in reality if management has not assigned

any duty to him on that day then it is their mistake. They should not be allowed to treat contract workers in this pathetic manner.

Some days ago I attended a consolidated campaign, with my friend Sandeep, which was called by the contract workers. In this meeting one worker told me that he never used to drink alcohol but due to work tension he has now taken up drinking. He comes from Rohtak and has to report early in the morning and in a month he is assigned duty for approximately ten days. He has nothing to do on the other days. They have contested with management and the Delhi government several times but have only received false assurances in return. I wanted to bring this to your attention and would like your support in dealing with it.

**P C TEWARI**
*Social Activist and Trade Union Leader, Uttarakhand*

***We are trying to organise people and ascertain political pressure on the labour department. There are some labour issues we are trying to address in this area. We had organised a seven day demonstration to fight for labour rights. We demanded that the government of Uttarakhand must ensure the proper functioning of the labour department***

When I was fighting for peoples' rights, the land mafia and the water mafia were against me in the state of Uttarakhand. They tried to attack me through pamphlets and posters; they even tried to publish articles in the newspaper to defame me. Those newspapers were publishing fabricated stories about me for two years. It became very difficult to make my family understand what it was that I was actually doing. It is really important to fight these attacks.

There is another issue I would like to discuss very briefly here. In our area, the problem of wild animals destroying the crops is rampant. Farmers are really suffering because of this. The government is not doing much to solve these issues. Our area is an underdeveloped area despite the fact that the government has made tall claims to address the issue of unemployment in this area. There are huge discrepancies and corruption found in MNREGA work. To fight against the menace of wild animals, women in Dwarahat were organised in huge numbers. They formed an organisation called *Mahila Ekta Parishad*. Initially, the local police was against them and claimed that these women have a link with the Maoists in this area. The police tried to file criminal cases against them but when the local public united against the police and supported the women organisation, the police were forced to withdraw the cases. So it is essential to protect the human rights defenders.

The labour department is extremely dysfunctional in our state. We are trying to organise people and ascertain political pressure on the labour department. There are some labour issues we are trying to address in this area. We had organised a seven day demonstration to fight for labour rights. We demanded that the government of Uttarakhand must

ensure the proper functioning of the labour department. As you all know, we do not have any heavy industries in Uttarakhand. The state is yet to explore industrialisation, but there are possibilities that like other states, the ruling establishment in Uttarakhand is also going to appease larger corporate groups, which in my view is a great threat to the environment. But so far, the state has not witnessed any prominent labour movement to fight for labour rights. Whoever is fighting to defend human rights, fighting to protect the environment, the natural resources like *jal, jangle, jameen* of this area, are definitely threatened by the government.

I would also like to discuss another issue, though it is a bit different from what we are discussing here. There is a government officer from Delhi, who has huge land in our area and has started a luxury resort business called 'pleasant valley'. Apart from the land he already had, he also tried to occupy the adjacent land. We got to know about it and started protesting against him. We went for a fact finding, did a thorough investigation and found out that he had encroached upon several acres of land illegally. When we protested against this encroachment, this person along with officials from the local administrative agencies tried to attack the activists and booked and implicated the activists in several false cases, one even under the SC/ST (PoA), 1989. We tried to find out the truth but nothing had happened. Soon a team of the investigating agency went and found out that the local activist who had complained against the person from Delhi for illegal encroachment also has a small patch of encroached land with him and that was his only source of livelihood, but if a person is encroaching a huge patch of government land for a profitable business, that is a matter of concern.

Now, let me tell you a very interesting aspect of how trade union movement and workers' struggle yield a fruitful result in terms of formation of a new state. The movement for the formation of the new state of Uttarakhand was led by the workers' union. Let me put the characteristics of movements and struggles honestly. Most of the struggles and movements that we are leading today are only on economic issues. We need to give the movement a political shape. Mere fighting to achieve economic goals is not sufficient. We have to have a political vision to make the movement successful. Then only way we can have a consolidated struggle to fight against the human rights violators. Therefore, we need to have a proper strategy and there is a need to raise the issues beyond the fight over economic issues to the next level for more strategic change.

**AMARENDRA SHARMA**
*Maruti Suzuki Union*

***The management threatened us by saying that if we did not sign the bond we would be thrown out. We were forced to sign the bond, but most of us resisted that move of the management. However, the management did not stop here and, to the ordeal of all the workers, it started using several tactics to harass us. We had an agitation for about 13 days. Eleven of our colleagues were suspended.***

I am from the Maruti Suzuki Mazdoor Union. I am here to discuss the problems and issues faced by workers in the car factory of Maruti Suzuki. We have very peculiar problems and issues. The workers in the Maruti Suzuki company, work like robots. Every day we have to assemble near about 40-45 cars, we have a small break of seven minutes in between our shifts. In this small break, we have to go to the toilet and have our tea or snacks. What I am trying to say here is that we really have a very exploitative system. The situation in the Productivity Performance and Reward System (PPRS) is such that if you take holidays for even 5-6 days, half of your salary is deducted. Recently, we had our worker union elections after 11 years. We had a strike to solve the issues of workers on 3rd June 2011. The monthly pay for all of us was deducted. We have already given our feedback on these issues to the management. On 4th June, the management came out with a bond. The bond was about supporting the old workers' union. The management threatened us by saying that if we do not sign the bond we will be thrown out. We were forced to sign the bond, but most of us resisted that move of the management. However, the management did not stop here and to the ordeal of all the workers, they started using several tactics to harass us. We had an agitation for about 13 days. Eleven of our colleagues were suspended. We continuously agitated against the management decision and somehow managed to revoke the suspension of our colleagues and the management was forced to retain those workers.

On 29th August 2011, the management sealed the entire factory and opened a small gate



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for the workers to enter. On that day the management forced us to sign a document of good conduct. It is important to mention here that, during the time of economic recession in the whole world, the workers at the Maruti Suzuki factory worked over time for about two extra hours every day to increase production. After that some workers protested against this and the management very tactically forced a strike on all the workers saying the work has suffered because of the worker agitation. After the strike was over, again the management found another way to harass the workers. For example, the workers were shifted to different areas of work. The painting department was shifted to the welding department and so on. In this way our capacity and efficiency was also affected. We were agitating against this and the agitation continued for 32 days. Around 1200 workers were laid off after the strike so again we protested against the management to employ these 1200 workers and we succeeded in doing that. Unfortunately, even though Maruti Suzuki succeeded in getting the CSI awards for 11 consecutive years, the hard labour of the workers is not recognised. We still have the most exploitative processes and workplace where there are virtually no labour rights and we continue our struggle. In the bike plant some anti-social elements supported by the management even fired at the agitating workers but somehow even in this difficult situation we continue to fight against injustice.

# DAY 2

November 20, 2011

NATIONAL CONSULTATION ON
HUMAN RIGHTS DEFENDERS
19-20 November 2011
India Islamic Centre, Lodhi Road, New Delhi
Organised by
HRLN
Human Rights Law Network

# Session 1

## ASSAULTS ON RTI ACTIVISTS

**SHAILESH GANDHI**
*Chief Information Commissioner*

***I would like to share something that we as commissioners are trying to do and in which, I believe, there will be legal possibility. If somebody is attacked or murdered, and we believe that the attack is because of an RTI query or series of RTI queries, it is possible that someone close to the particular activist would have had access to the RTI application made by him/her***

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In the last one and a half years or two, RTI has started making significant inroads into the power equations. I suppose it was expected to be so when we have a very poor security system in the country and a system that is unable to guarantee security to individual citizens. Let us be very truthful and admit that in this country we are not worried if one person gets beaten up somewhere or killed or taken to jail and kept there for years. We have lost our sensitivity.

Let me share some statistics, which have always horrified me. About 30 percent of people in Indian jails are convicts and 70 per cent are usually under trial. With the given conviction rate of about 15 per cent, out of the 70 per cent only 15 per cent are convicts. It means, that 30 per cent are convicts and 10 per cent are likely to be convicted and 60 per cent of the people in prisons are probably there for only one fault, which is the fault of being poor. We have got used to it and so let us stop pretending we are horrified when some set of people get attacked or are treated with gross injustice. We are horrified when another RTI activist gets hurt because we belong to the same group, the same class of people and therefore his/her predicament concerns me.

So we are basically operating within the same caste system. Are we really bothered about any citizen, any human being who are facing any kind of injustice? The answer is no. We have really lost our sensitivity. Otherwise, we would have revolted a long time ago and said that this is not acceptable. We are defending our kind. Earlier, the caste system would defend their own work; here we are doing something almost similar. We are also evolving into a kind of caste and we are saying that if you are an RTI activist then you are of my kind. Then I need to find ways of defending you because you are my kind. I think ultimately real security will only come when we can guarantee, even if in a small manner,

the rights of all human beings wherever they are Having said that, coming back to RTI itself, let me share the problems I face as a Commissioner (CIC) Whenever somebody says he has been assaulted or even threatened, the normal position one takes is to write to the police and ask them to do a risk assessment and for the provision of security as appropriate But it is not uncommon for a small percentage of people to come and very easily claim that they are being threatened and that they need action to be taken in this regard Sometimes one gets a sense that the other person is perhaps lying The reason I am using this strong word is because it is a lie

Therefore, it becomes difficult to differentiate, in fact, amongst the activists who were being murdered, a lot of other people say that some of these murders probably have nothing to do with RTI True, that the person did use RTI but whether the killing was because of it or some other enmity is not very clear I think we need to be conscious of these vagrancies because if a strategy is evolved, does it mean that a person who has filed an RTI application is entitled to a higher level of security and a higher level of support than anyone else who gets murdered Also, not every activist, so to speak is really fight ing for the rights of the people or for a genuine cause There are people who are doing wrong things and therefore should such an organisation and such people be supported and so on. These baffling questions need to be considered in detail before reaching a conclusion

I would like to share something that we, as commissioners, are trying to do and in which I believe there will be legal possibility If somebody is attacked or murdered and we be lieve that the attack is because of an RTI query or series of RTI queries, it is possible that someone close to the particular activist would have bad access to the RTI application made by him/her It is expected that the purpose of the attacks or murder would be to ensure that the information does not come out So therefore, the proposition is that someone files a complaint to the commission saying the RTI applications are pending The commission would, or the central commission would, pass a resolution to this effect and I think a lot of the state commissions can also do that, they would issue an order to the public authorities where the RTI applications are pending, asking that all the infor mation be put up on the websites of public authorities within 15 to 20 days If we are able to do this then there is a possibility that attacks to suppress RTI would not take place or atleast reduce in number If somebody says that one is asking for inconvenient informa tion and the person is attacked, then the information will go out into public domain on websites by an order of the commission.

The second proposition is that the commission would also simultaneously give an order to the police authority instructing them to put up the progress of the investigations on the website every month The police, of course, cannot be forced to do anything but at least the progress of the investigations can be put up suo moto If these two things are followed then there is a possibility for the situation to improve In fact, I am trying to get some contact information on Shehla Masood and will be glad to share with anyone who is interested in the draft of the complaint, which I have made Given the legal basis on which the commission or any commission could pass an order on these things, this could be one defence mechanism for ensuring reduction in crime I am not saying that



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things are going to change by tomorrow but if these mechanisms are implemented a number of times, such attacks will gradually reduce.

Also during my tenure I observed that the government had designed the PDS scheme in such a way that only corrupt people would come forward and show interest in taking PDS shop licenses For example if anybody gets a PDS shop then he will earn only six thousand rupees as commission monthly. But he will have to take a room in Delhi and also hire one person as an assistant So, the expenditure on these two would be close to Rs. 4000 and the person who is running this shop would get only Rs. 2000, so it can be assumed that he would be a BPL

The problem, therefore, is that no honest person would come forward for the minimal monthly income that the PDS shop generates Thus, the PDS has gone into the hands of the corrupt and the criminal It is essential that the root cause of the problem in the design of the PDS scheme be located or else we will be engaged in this fight for hundred years and more but it will still be of no avail It is a disturbing discovery that the higher officials are not only aware of this serious flaw but that they take the corruption for granted The state of affairs of many government schemes and provisions is the same and it needs to be addressed as the first step towards improvement.

**VIJAY KUMBHAR**
*RTI activist*

***The RTI activists are more prone to attacks because they possess authentic information and on the basis of this information they can easily expose the real culprit. It is due to this threat that many activists are seeking police protection, including myself at some point of time. Speaking from my personal experience, if one is in police protection, that means he/she is virtually in prison.***

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I will refrain from saying anything about the attacks whether related to attacks on RTI or on human rights activists. Both have essentially the same characteristics. So far, thirteen RTI activists have been murdered. The crucial question is regarding actions by the authorities after the murder? At what level is the investigation carried out? When Satish Shetty was murdered, RTI activists held a demonstration in Pune. In three months we met the DIG who assured us that the investigation is moving in the right direction. Hence, we assumed that the culprits would be caught soon. As we came out of the DIG's office and during our interaction with the media, one of the police officials asked me as to what kind of information Satish was in possession before he was killed. It was clear to me then that the police would not proceed far in the investigation because they didn't have primary evidence with them.

There are three aspects to this indifference on the part of the authorities: one, there is a nexus between the politicians, bureaucrats and the beneficiaries, two, all these three are involved with each other, and three, they all want to sabotage such investigations and they are largely successful. The RTI activists are more prone to attacks because they possess authentic information and on the basis of this information, they can easily expose the real culprit. It is due to this threat that many activists are seeking police protection, including myself at some point of time. I can say from my personal experience that police protection means one is virtually in prison!

I feel that as RTI activists we are not sharing information obtained under the RTI Act with each other. This is a major reason for the activists coming under threats, because many times the information with an activist is like a bomb which is waiting to explode at

any time. Hence, activists must share their information with each other or give it to the media so that pressure on them comes down. People blame us saying that RTI activists are giving information to the press for the sake of publicity only but our real purpose is to give information to the people, so that they know what is going on. Although many people demand to new laws to protect activists, lawyers, etc., this does not appear to be prudent because there is a limit to the number of laws the government can make.

Our existing laws are good enough and need to be implemented properly. For example, in the RTI Act, there is Section 4, which can be used to get almost all the information under this Act and to bring important information in public domain. We need to make an effort in this direction. This will certainly reduce the number of threats because information then will be in public domain. It is unlikely that attacks on activists will come down even if we hold meetings and consultations. There are so many issues which we have to deal with, so many mafias – oil mafia, sand mafia, land mafia and so on. We need to prepare ourselves to fight against the mafias.

For the last two days, we have been talking about human rights. Be it Chhattisgarh or Maharashtra, we need to formulate a strategy to understand the issues of human rights everywhere. Secondly, the government is trying to make an amendment in the RTI Act, claiming that the Act has been misused. There are many laws that are being misused in the country since its inception, why blame only RTI Act? I am not sure whether RTI as a tool is being misused or not, but if the government goes for a protection mechanism to avoid the misuse of the Act then the very essence of the RTI Act will die and that is the main cause of my concern against which we should raise our voices.

**SANTOSH KOLI**
*RTI activist*

***I was pressurised to stop my work. I was attacked when I did not budge under pressure. They attacked me nine times and on two occasions, they tried to kill me. Interestingly they always informed me before the attacks. Once they tried to slit my throat and in another attack they tried to injure my face. It was traumatic for my family to the extent that they asked me to stop my work.***

I am an RTI activist working with Parivartan since the last ten years. I personally have faced several attacks in the course of my work in the Right to Information field. Once we were working in Sundernagar in Delhi where the beneficiaries had red and yellow cards (BPL & Antodaya Cards) but were not getting ration from the PDS shop. When we filed an RTI in this case, we found lots of discrepancies in the public distribution system during the auditing. We raised our voice against this and tried to expose the mafia and administrative authority involved in this case. But we recieved resistance from many quarters to stop our work. We were even threatened on many occasions since many powerful people were involved in the case. They had a very strong informatron network so we were followed everywhere.

I started working on the food distribution scam and I got all the information through RTI. Since there were only a few people who were filing RTI on these issues it became very easy for the PDS mafia to track me down. Since I was staying in the same locality where I was investigating the local PDS and I personally knew the local MLA and many other people, to carry out the investigation was very difficult. I was pressurised to stop my work. I was attacked when I did not budge under pressure. They attacked me nine times and on two occasions, they tried to kill me. Interestingly they always informed me before the attacks. Once they tried to slit my throat and in another attack they tried to injure my face. It was traumatic to my family to the extent that they asked me to stop my work. Finally a resident of the area met the assistant commissioner to solve the issue amicably and told him that nobody will be purchasing any ration from the PDS shops even if the ration is returned to the FCI godown. The people said that they are not going to

tolerate such incidents again. The CM recieved information about it and called a meeting and during the meeting called for a social audit of the PDS system of that area. However I was attacked even after the intervention of the chief minister. Eleven RTI activists have been murdered like this so far. Living in Delhi, we often get media coverage on these issues. But, for people who are working in villages, where there is no media access, it is difficult for activists to act swiftly and let the public know of such violations. I believe it is just a matter of time, since my experience tells me that nothing is impossible if you decide upon it. All of us can learn from the struggles of people like Binayak Sen.

In another case, we all know that 25 percent of the seats in private schools are reserved for children from marginalised communities. Similarly, 25 percent of the beds in hospitals are to be kept for patients from marginalised communities. When we tried to contact principals of some of the private schools in Delhi regarding this we were not even allowed to enter the school premises. Both teachers and the principals of these schools have shown no concern for the guidelines and refuse to take the children from the slums on the premise that it will have a negative impact on the environment of the schools as most of the slum children use foul language. So the attitude of the teaching community reflects that one is entitled to good and quality education only if one has money. It is disappointing to watch the government spend crores of money on these sectors to no avail. We are fighting for equality and equal opportunity for everyone. If private schools can provide good education, why not government schools? If private hospitals are providing all kinds of facilities and medicines, why not the government hospitals? When we raise these questions, we face attacks. When we fight for the admission of underprivileged children, we face lathi charge by the police. When we file RTI to seek information on the admission process the education mafia harass us. It is, therefore, a continuous struggle for all of us. We face the wrath of the education mafia when we fight for educational rights of the underprivileged children. Using the RTI, we have succeeded in opening the doors of education for poor children and approximately 500 to 600 children are being taught in private schools and are doing very well. Even various school administrations have accepted that.

Another point I would like to highlight is the case of GTB hospital, which is near my residence. People from across the country come here for treatment but the hospital authority is not following any guidelines in this hospital. There is a lack of basic facility like gas and essential life saving equipments, the behaviour of the doctors is so cruel that in a particular incident the doctor removed the oxygen pipe of a patient who was complaining about something and slapped him so hard that he died on the spot and the doctor pretended as if the patient died during the course of treatment. Another woman from Moradabad informed us that the doctors were asking for one lakh rupees for a knee replacement surgery. I registered a complaint with the senior doctor and when the concerned doctor heard about the complaint he refused to do the treatment. We filed an RTI to seek immediate action and moved to the court seeking justice and consequently she got treated for free. My question is that if one person can get free treatment then why not others? It is a continuous struggle with the CIC to seek justice. When we were fighting with GTB, we attempted to meet the CIC to request him to appoint sensible officials in

issues like PDS, education and health We sat in a dharna in front of his office. The police callled, we were arrested and an FIR was registered against us The case is still running in the court

I also want to share my experience in Delhi When the cash for ration programme was started by the government we did a survey and called a meeting of the people in our area Being a World Bank move, we protested against this policy of the government We were shocked to discover in the course of 4-5 meetings that even the local MLA and many others were not aware about this scheme of the Delhi government. We had invited at least 15 NGOs to join us in our campaign and named the campaign *'Ration Vyavastha Sudhar Abhiyan'* We were called to the CM office where they asked for a feedback from the NGOs on the PDS During the meeting the chief minister pointed at me and said, "Miss Parivartan, we are watching you since the last ten years, tell me, what have you done except provoking people? We have many complaints against you and we can arrest you at any moment if you don't mend your ways" When we came out of the meeting, I faced the wrath of my NGO colleagues. What I am trying to say, through this story, is that at times we have such experiences even amongst other social activists and the people wa are working with We have to come together and stay united to fight for ourselves Let us think about how we can work together



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# Session 2

# SITUATION OF DEFENDERS IN THE NORTHEAST

NATIONAL CONSULTATION ON
HUMAN RIGHTS DEFENDERS
19-20 November 2011
India Islamic Centre Lodhi Road New Delhi
Organised by
HRLN

**BABLOO LOITONGBAM**
*Human Rights Alert, Manipur*

***There was a realisation of the need to go above and beyond the ethnic confines in the human rights movement of the region and the idea of the right to self determination was the central uniting principle... The issue of the nexus between human rights groups and the armed movement was raised in the Parliament and the home ministry listed a number of human rights organisations as having links with the underground movement. This and many attacks on the key human rights defenders make it extremely difficult for many of these human rights groups to function.***

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The democratic and political space available in northeast India is very limited. If we look back, the way in which the political and social processes lead to the creation of a democratic space it is slightly different in the northeast states from the way the main stream civil liberty and democratic rights movement came about. We have always been talking about partition of India and Pakistan on independence, but much earlier there was a partition in the eastern side when India and Burma offices were separated in the 1930s. The 1940s India and Pakistan partition also sliced out a considerable portion of Bengal. The two partitions kept the northeast isolated surrounded with rigid borders.

The political climate at the time of independence was not good. There were already many unsettled questions on the issues of the right to self determination of the peoples inhabiting the region which lead to the escalation of the armed conflicts in the mid 50's. The Armed Forces Special Powers Act (AFSPA) which everybody has been hearing about and regarding which IromSharmilahas been fasting, was enactedas the states response to the conflict. It was vehemently opposed by many parliamentarians in 1958 saying that this is in fact an emergency law and the Indian state being a democracy should not put all its military might in this area without declaring a state of emergency. The use of this law was basically a license for the military to go and destroy people's houses, search anybody's house without a warrant or even kill people on mere suspicion without any legal recourse whatsoever unless and until there is sanction from the central government. So there is denial of democratic rights in the northeast since the consolidation of the republic in the region.

In the 1950s, we see a complete erosion of democratic space in the Naga Hills, this spread in the 60's to the Lusai Hills (now Mizoram). Even the Indian Air Force aerially bombed the civilian population in these hills. Till date, the Mizo student groups are demanding a public apology from the government of India which has never arrived. The disturbed area spread to the valleys of Manipur and Tripura in the 70s and engulf the Brahmaputra valley in the 80s. In the disturbed areas the state had virtually declared war on its own people, sans the protection of international humanitarian law.

Interestingly, the democratic space that the people were trying to claim came from a retired army officer. His name is Brigadier T. Shilo. Hailing from Mizoram, he served in the British Indian army and continued to serve in the Indian army. When he was retired and building up his own house in Shilong, an IAS officer told him the story of the mayhem in Mizoram. He went to see for himself how the Indian army was literally burning away villages. He was deeply hurt by this. At that time, he wrote to Mrs Indira Gandhi, the then prime minister "in short, the image of the Indian army has reached its bottom so far as the general public in Mizoram are concerned. This has personally affected me and caused agony to my feelings because of the fact that I am basically a Mizo and at the same time I have been a soldier of the Indian army for over thirty years. Mizo is in my blood and the Indian army is in my flesh and bones." So in the early seventies, long before we had PUDR and PUCL in other parts of the country, Brigadier Shilo formed a small group of citizens in a house in Aizwal and they constituted what is called the Human Rights Committee, which is perhaps the first human right organisation in the whole country. This man went to villages and tried to persuade the Indian army exercise some restrain, giving some relief to the villagers and paving the way to a peace process which came about in the 80s.

During the post emergency period, there was anoutbreak of democratic rights movement across the country. Students coming from the northeast studying in JNU and Delhi University were confronted with a contradiction. They are exposed to the fiery democratic speeches in their institutions; but when that go home they had to stand for long hours in their village playgrounds for the Army to scan them with their masked men. And one node from the masked men could be the end of their precious lives. This contradiction led many students to start human rights group of their own community. The Naga Peoples Movement for Human Rights (NPMHR) was formed in the mess (dining space) of JNU and the Human Rights Forum (HRF), Manipur was formed at the tea stall behind the Gwyer Hall in the Delhi University. HRF successfully admitted the first Public Interest Litigation (PIL)challenging the constitutionality of the AFSPA in the Supreme Court on 10 October 1980.

The civil society in the northeast also responded to the radical changes sweeping the judiciary. In 1983 a group of lawyers and journalist formed the Civil Liberties and Human Rights Organisation (CLAHRO) at Imphaland started litigating on behalf of the victims of human rights violations. But they soon realised that the law courts was unable to deliver justice and safeguard the human rights of the people in northeast. So in the 1990s, another kind of human rights organisation took shape ManavAdhikarSanghars hSamiti(MASS) in Assam and the Committee on Human Rights (COHR), Manipur,



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Borok Peoples Human Rights Organisation (BPHRO), Tripura etc firmly believing in mass mobilization of peoples as the only way to fight state repression For the first time there were efforts to build alliances amongst the human rights groups across the region leading to the formation of the Northeast Coordination Committee on Human Rights (NECOHR) in mid 1990s. There was a realisation of the need to go above and beyond the ethnic confines in the human rights movement of the region and the idea of the right to self determination was the central uniting principle The state sees such organisations as basically frontal organisation of armed self determination movements The issue of the nexus between human rights groups and the armed movement was raised in the Parliament and the home ministry listed a number of human rights organisations as having links with the underground movement. This and many attacks on the key human rights defenders make it extremely difficult for many of these human rights groups to function.

The year 2000 brings the extraordinary struggle for the demands to repeal the AFSPA in the form of Irom Sharmila, who is herself a product of a much larger movement

Currently, we as a human rights defender community in the northeast are still struggling to systematically document the human rights situation in the northeast states and to use the mechanisms and institutions that are now available for the promotion and protection of human rights domestically and internationally

Isolation is a crucial issue we are trying to break away It is important for us to locate and understand this context It is also necessary for us to realize that geopolitics too play an important role in the democratic space that is available to the people of the northeast

**NAVA THAKURIA**
*Journalist from Assam*

***The journalists of our region are raising voices against all human rights violations. As media persons are raising voices for social causes, they are also being targeted. We have lost over twenty editor-journalists in two decades. Most of them are being killed. But shockingly, not a single culprit (involved in all these killings), has been punished till now. So now one can make a statement in Assam that, if you want to kill someone without accountability, you should target a media person.***

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Assam witnessed a different kind of uprising in 1979 in the form of AASU (All Assam Student's Union) movement, against millions of illegal migrants from Bangladesh. It was a historic movement, in which people from different sections of society came together. We were school-going students and at that time when we witnessed how two young leaders, Prafulla Kumar Mahanta and Bhrigu Phukan, emerged like Ram and Laxman (of the great epic Ramayan) in the Assamese society. The media was extremely supportive of the cause and the people of Assam truly believed that the illegal Bangladeshi migrants would leave the state some day.

People in general believed in the idea of a Sonar Asom (Golden Assam). In the same year the United Liberation Front of Assam (ULFA) was born in eastern Assam, with an aim to make Assam independent of India.

This group grew up to its full strength in around mid 1980s. Initially, the ULFA was also supporting the deportation of illegal Bangladeshis from Assam. (Later many of its leaders took shelter in that country and so they remained silent).

There is no concrete statistics about the number of illegal migrants from our neighbouring country Bangladesh (formerly East Pakistan), but we believe it should be around 20 lakhs, who migrated to Assam (and also West Bengal) during their Muktijuddha (Freedom Movement in 1971), and still living in Assam.

As the Assam movement gained momentum, the union government sent the armed forces like CRPF to tackle the situation. The CRPF jawans spread out in the villages of Assam, in search of AASU members and ULFA cadres. Then began the days of harassment to local people. Many young girls and women were raped by those armed forces.

jawans. We had to spend sleepless nights outside our homes for months as the CRPF jawans could come at at time in the night and pick up anyone.

The Assam movement ended with the 'Assam Accord', signed in 1985, by leaders of AASU and the union government. A regional political party, Asom Gana Parishad (AGP), was formed by the supporters of the movement. Soon, the AGP formed the government in Assam. Meanwhile, the ULFA leaders became more powerful and started disruptive activities including extortion and killings. It did not last long as New Delhi banned the ULFA in 1990 and started the *Bajrang Operation* against the armed militants belonging to ULFA. Common people were harassed and killed by both armed forces and also ULFA rebels. By the nineties a large number of people were subjected to death by the militants. The victims included political leaders (mostly from Congress), social activists and also journalists because they raised voices against the terrorist activities by ULFA leaders and cadres. The media had a tough time to perform its role. The militants used to send press releases, with an order to publish those without any changes in the content and without any editing. Very few editors and reporters opposed the dictate.

In 1990, a teacher and journalist covering rural areas, Kamala Saikia, was killed by the ULFA militants. Then, I witnessed how a protest meeting, against the killing of Kamala Saikia (at Guwahati Press Club), was divided. Some journalists even argued that Saikia might have done something wrong and so he was targeted by ULFA rebels. Eventually a silent protest demonstration took place against the killing. Incidentally it was the first protest program in the streets against the militancy in Assam.

In 1997, Parag Kumar Das, an acclaimed human rights activist and journalist, was gunned down by miscreants. (We still believe that the men in government were involved in the killing.) Das was aggressive in his writings and was sympathetic to the causes of ULFA to many extend. His colleague Ajit Kumar Bhuyan, another popular journalist of Assam was also targeted by the authority. Bhuyan was jailed many times and also tortured by the police as he too, allegedly wrote anti New Delhi articles.

Parag Kumar Das formed a rights body named Manav Adhikar Suraksha Samiti (MASS). Even after his killing the forum remained active and Lachit Bordoloi took charge of MASS. MASS has continued raising voices against the killings in Assam. MASS lost its credibility to some extend as it opposed the killings of militants only. There is still confusion among the people of Assam about the functioning of human rights activists, as it is they, who allegedly speak the language of militant groups only, and they hardly make comments against the militants even though they kill common people. Now we have come to the consensus that we must fight against both the state and non-state actors who are creating havoc in worsening the human rights situation in Assam.

Assam is the land of many ethnic groups and small communities. The Bodo, Rabha dominate western Assam, where you can find a sizable Muslim population. Bengalis are dominating the Barak valley of Assam. The Ahom, Missing, tea tribe are important ethnic groups of eastern Assam. Assam, in that sense, is a mixing land of Mongolian and non Mongolian, Aryan, non Aryan, Hindu, Muslim and Brahmin, non Brahmins. So we have to deal with our conflicts in different dimensions. And that remains a very difficult task always.

Assam and the northeast region have witnessed massive uprisings against the Armed Forces Special Power Act (AFSPA) 1958, the big dams and insensitive attitude of New Delhi towards the people of the region. One Meiteigurl (from Sharmila Chanu) is maintaining her hunger strike for more than a decade with a sole demand to repeal AFSPA from Manipur. RTI activist and team Anna Hazare member Akhil Gogoi continues his movement against large hydroelectric dams in the region. The governments, both in New Delhi and Assam, are now making statements about the entry of Maoists in Assam. They argue that the Adivasi groups are working with the ultra left organisation. Even the government machineries insist that a section of anti-dam activists are being involved with Maoist. It is apprehended that the government may target Akhil Gogoi as a supporter to Maoist activities and thus arrest him to crush the movement.

Assam continues to be a land of militants as we witness the birth and nurturing of armed groups in a continuous process. Besides ULFA, the rebels belonging to NDFB, DHD, KPT, NSCN are still active in the state.

I heard one speaker that narrated about the Raipur Press Club, which, allegedly, often issues statements on behalf of the government. It is very unfortunate, but I swear it will never happen in Guwahati Press Club. Our press club does not allow the government machinery to overtake us. At the same time, we do not work for the authority. We also avoid taking donations from the ministers. We run a small office, but try to be really active. Not to speak of dictation from the ministers, they do not dare to come to our press club with ill motive. We may be a little poor, but we are independent in all aspects.

The journalists of our region are raising voices against all human rights violations. As media persons are raising voices for social causes, they are also being targeted. We have lost over twenty editor-journalists in two decades. Most of them are being killed. But shockingly, not a single culprit (involved in all these killings), has been punished till now. So now one can make a statement in Assam that, if you want to kill someone without accountability, you should target a media person.

Being in media, we have to highlight anomalies in government machineries, write articles against all kinds of mafias, goons, anti-social elements and the militant groups. We are really trying our best to pursue the cause of journalism in our part of the world. I agree that many mainstream media houses are losing their soul. They have now started speaking the language of corrupt politicians, powerful individuals and corporate giants. But the regional media in Assam is pursuing the cause of people's plight and their problems to the policy makers. I personally believe that in the next five to ten years, we will live in a world of journalists with their own thoughts, believes and imaginations. The new brand of journalists may not be the employees to any media house, but they will perform the role of the sentinels in true senses. The journalists engaged in alternative media do not have many limitations as the salaried journalists have to face always. A journalist outside of the so called media offices thus will be much better, more efficient and visible in our country very soon.



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**ROSEMARY DZUVICHU**
*Advisor to the Naga Mothers' Association*

***The human rights defenders in a place like Nagaland are caught between the voices protesting against the state and the actions of the movement for self determination and the militant underground groups, which are many. There have also been numerous attacks on the Nagaland media.***

I represent the Naga Mothers' Association, the apex body of Naga women and women's organisations in Nagaland, engaged in struggles for women's rights in particular, and human rights in general. The Naga People's Movement for Human Rights, the NPMHR, was born in the mid 70's and is one of the most organised human rights organisations in the region.

The state of Nagaland is witness to, and its citizens victims of, a range of security laws the Armed Forces Special Powers Act, the National Security Act, Disturbed Area Act and so on.

When we talk about attacks on human rights defenders, the list is endless – attacks on women, students, human rights activists. Killings in open daylight without any consequential action are routine, almost the order of the day, in Nagaland. When we talk of the situation of the defenders, the immediate words that come to mind are harassments, threats, telephone calls, visits by army personnel, raiding houses in the middle of the night etc. I had a terrible experience when I was the co-convener of Naga People's Movement for Human Rights (NPMHR). My house was surrounded in the middle of the night by around 30-40 Indian army personnel wearing Naga shawls. They banged on my gate asking me to open it. Since they were speaking in Hindi, I pretended not understanding them. They pushed an army captain in front of me who spoke impeccable English. I was living with my three young children and refused to open the door at mid-

night until female police women were called. They had a gun aimed at me and I only had a young boy holding mo in the house. We were forced to open the door and tho moment we did, tho army captain started moving towards my bedroom. I threatened to report to Brigadier Nair of tho Assam Rifles. Fortunately, as human rights activists, we were in constant interaction with Brigadier Nair. They had to leave in tho face my threat.

The surprising thing is that the Indian army personnel chose to disguise themselves, wearing Naga shawls, in the middle of the night. The next morning, I went with my brother and met Brigadier Nair, reporting the incident, and requesting to put an end to such visits to my house. But I think that is just one example to show that you are profiled and identified. At that time I was already working as a university teacher. The incident shows that it does not matter where you work, no matter who you are, you are not safe if you are working for the rights of the people and questioning atrocities that are committed by the armed forces. The human rights defenders in a place like Nagaland are caught between the voices protesting against the State atrocities and the actions of tho movement for self determination and the militant underground groups, which are many. There have also been numerous attacks on the Nagaland media. The editor of tho only local daily newspaper we had was gunned down in tho middle of tho day in tho early 80's and his killer has not been found to date. We have had numerous attacks in the last few years on young journalists, most of them shot and maimed, but with no follow up from the government in spite of huge pressure created by the human rights activists.

Nagaland also has a history of genocide under the Indian armed forces and it is something many Indian friends are not aware of. Rape, killings, torture, disappearances and unimaginable army atrocities have been the order of the day for tho Naga people. I can very well feel and understand the stories of the Kashmiris, of Sikhs, and share your pain, because we have gone through the same kinds of experiences. Nagaland probably has one of the highest numbers of war widows. Therefore, when we talk of defending rights, especially from tho gender perspective, we need to understand the complex situation where women are victimised twice. We are not only talking about fighting against the State alone, we are also talking about the situation where tribal women are protesting and fighting for their rights within the tribal communities. Therefore, on one side you have the State harassing you, profiling you, giving you all kinds of threats, and, on the other side, you have tribal leaders of your own community who defame you, go to the extent of character assassination, just because you are raising voices for women's rights.

I want to share a recent incident. Nagaland is perhaps one of the few states in the country that has not implemented the provisions of 33 per cent reservation for women in the municipalities and town councils. Although the Nagaland Municipal First Amendment Act was passed and adopted by the Nagaland Legislative Assembly, the government did not hold any elections and did not implement tho Act in tho last five years. This year, under the leadership of the Naga Mothers Association, and the coming together of 15 tribal women organisations in Nagaland, we contacted Mr Colin Gonsalves of HRLN who argued our case in the High Court of Kohima and we got a positive order directing the government to hold elections of district municipal corporations in a stipulated time, ensuring 33% reservation for women.



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The government was shocked because this was the first time that the women had stepped out of their traditional roles and questioned the state as well as the Naga tribe leaders. Naga women were going against the customary practices of the different tribes, which do not allow space for women in decision making bodies like the village councils. In most Indian villages, there is panchyati raj, whereas in Nagaland we have village council which have only men representatives.

The impact of this judgement is very interesting. On one side, we have the state government literally looking at women leaders as upcoming rebels and trouble makers, and, and on the other side, we have the opposition from the apex tribe organisations, or Ho Ho's, which are male dominated and cannot easily accept the role of women in public sphere. As a first step of seeming reprisal, an apex tribe organisation has suspended one of the womens organisations in Nagaland, even though it was on grounds of an issue of rape. The organisation, Watsu Mongdang, is led by highly educated Naga women. They have suspended this organisation for daring to go against the traditional customs.

Secondly, I want to talk about the attacks on the academia. The northeast has eight central universities, all governed by the central government. Vice Chancellors are mostly chosen at the whims and fancies of the politicians. And the tragedy is that most of them come with no idea of what the northeast is all about, they come along with racist prejudices. Official notices under the central service conduct rules, which have nothing to do with our university, are often applied here, even though central university teachers don't fall under the purview of central service conduct rules. Because of our active association with movements like Naga People's Movement, and also being active within the teaching community by fighting and seeking accountability on corruption within the university, we have managed to bring about a CBI inquiry and two fact finding committees into the universities from the UGC and the MHRD. The end result was two suspensions. In a period of three years, my secretary and I, as President of the Nagaland University Teachers Association, have been illegally suspended twice and faced five months of not even a subsistence allowance being given. When I came to Delhi, I was surprised to see the same things happening in Delhi University, a university we look up to. On hindsight, despite the distance and discrimination, we have managed to make our voices as teachers heard within the corridors of the Ministry of Human Resource Development, the CBI and the Rashtrapati Bhavan, but at what cost?

I also want to share something on the Right to Information. We filed an RTI with the President of India, and I remember the first time I went to Rashtrapati Bhawan and stood there at the registry. The clerk at the window said that RTI can never be filed in the Rashtrapati Bhawan. I had to argue with the clerk and tell him that I had come all the way from Nagaland. Finally, an officer came and filed the petition and the response was immediate. We had tried for eleven months to get an appointment with the President regarding corruption issues at the university. After filing the RTI at 10 am, I was invited by the visitor's office to visit the Rashtrapati Bhawan at 4 pm. The discussions resulted in an immediate directive from the visitor's office for a CBI probe into corruption and all financial irregularities. In Nagaland University, amazing things can happen through the RTI.

We had again to file an RTI against the CBI officers who came to our university for the investigation, and visited all the tourist spots, hosted by the vice chancellor who was himself under investigation. They did not do any serious investigation and went back to Delhi. We sent a memorandum against these CBI officers, but the CBI director was not ready to meet us. When we informed the CBI director that we had been invited to the Rashtrapati Bhawan the next day for a meeting in the visitor's office, and that we would be taking up corruption within the CBI officers, our delegation was immediately invited for discussions.

We have also filed an RTI on the inaction of the CVC on the corruption cases of both the university officials and CBI officers, who came to investigate. The CVC office passes the same petition on to the ministry of HRD, and then back to itself. My question is: if your RTI is against the top brass of police and investigating agency like the CBI, what do you do in such a situation? We had filed an FIR under the SC/ST Prevention of Atrocities Act because of the kind of harassment we faced from the vice chancellor – racism, derogatory statements, false allegations and all kinds of defamation.

The appalling part is that the Nagaland police officer who came to my house, asked for a copy of the SC/ST (PoA) Act saying he didn't have the one. It went on for months and nothing happened despite the fact that we wrote to the additional session judge on the slow investigation, besides the SP and DGP.

Therefore, we can only say that such strategies may work in some case, but for others who live far away from where the central government really governs and proclaims these kinds of policies, there is a long battle ahead.



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**IROM SINGHAJIT**
*Brother of Irom Sharmila Chanu*

***Sharmila is also a human rights defender but she is in custody. She wants to defend her brothers and sisters of the nation. She was born in our family as the youngest sister and she became the sister to the entire nation.***

We have been hearing and discussing the atrocities and killings of human rights defenders. But I am not a human rights defender, neither am a writer nor a lawyer. I am working as an agricultural officer since 15 years. I have come to Delhi from Manipur with a message from my youngest sister, Irom Sharmila who is on a fast for last 11 years. Her message is her struggle.

I would like to start with how her fast began and the reason behind it. In October 2000, there was a people's independent commission of inquiry in Manipur that was led by Justice (retd.) H. Suresh. The enquiry was organised by Mr. Colin Gonsalves and Mr. Babloo Loitongbam. My younger sister Irom Sharmila also participated in the commission as an individual activist volunteer. During the proceedings of that commission, she saw the victims of AFSPA closely for the first time. We cannot imagine women raped by the Indian army in front of their father-in-laws. She met those victims personally and was moved deeply. Exactly seven days after the completion of the commission on November 2, 2000, there was a cold-blooded massacre, where ten innocent people were killed in the cold blood by the jawans of Assam Rifles, including a child who was a National Children's Bravery Award winner. After hearing about it, Sharmila went to the spot, saw the blood spilled over there and decided that the only way to repeal this draconian Act from the surface of the nation was the way of non violence. She undertook a fast and decided to continue her fast till the end of her life, unless and until her demands were fulfilled and the AFSPA was repealed. She started her fast on 5th November, 2000, which continues till date. Her demand is very simply, the repeal of AFSPA.

I have also been working with Babloo, but since I am a simple farmer, not an activist, I

don't know about human rights. But I have taken the responsibility of taking care of my sister. Since she is in custody, she is not allowed to read newspapers. Our state government did not even provide a transistor (radio) for her and even our family members need to take permission from the home ministry to meet her. It used to take 15 20 days earlier, but now the process is even longer, it takes more than one and a half month now.

In 2009, our Just Peace Foundation (JPF) organised a five day festival for hope, justice and peace. Eminent personalities like Mahasweta Devi participated in that. Many other intellectuals from across the country came to Imphal to participate in this festival. But our CM did not give permission for us to meet her. This time, 'Save Sharmila' Campaign was organised from 16-27 October and activists travelled from Srinagar to Imphal spreading the message of peace. I was also in that team. The team members had decided to meet Sharmila upon their arrival in Imphal, that they would hand her over some flowers and some gifts on behalf of the people. We had already applied for the permission. But when we reached Imphal on 27th, our CM rejected our application. Members from 12 different states who had gathered there were shocked and dismayed to find out that they had not been allowed to meet Irom Sharmila. The biggest festival of Manipur was on 28th October this year. On this day all sisters are called by brothers and the sisters give blessings to the brothers. All our family members have been staying away from this festival because Sharmila can't attend this.

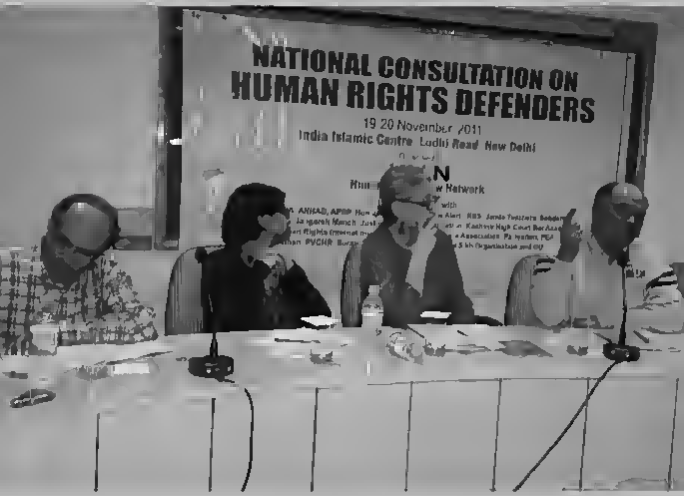
Sharmila is also a human rights defender, but she is in custody. She wants to defend her brothers and sisters of the nation. She was born in our family as the youngest sister but she became a sister to the entire nation. She has sacrificed her life for the security and peace for all. But in custody she is lonely, can't meet people and has no access to newspapers. If I want to hand over this pamphlet to Sharmila, I need the permission of the jailor. Everybody needs permission which is seldom granted.

Many human rights activists, civil society leaders, lawyers, doctors and many intellectuals are present here for this national consultation on human rights defenders. My humble request to all of you is to think of the custody room where Sharmila is lonely; how can she have the right to meet people freely. Even our mother needs to wait for 45 days if she wants to meet her. Any suggestion, any group can come to help us?

Let us unite and raise our voice in the Parliament in this winter session because Sharmila is being slowly killed by our state government. Our central government never tried to listen to her voice. Anna Hazare's fast was discussed in length in the Parliament. The media channels broadcasted Anna from morning to night. His demands were discussed and paid heed to by intellectual circles and NGOs. So far 11 years have passed and the state and central government has not paid any heed to Sharmila's fast. The mainstream media has always neglected the voice of the northeast region. It is one of the most symbolic examples of racial discrimination. We need to unite against AFSPA at this juncture, this law should not be implemented in any part of our nation. Not on the surface of Manipur, not on the surface of Jammu Kashmir, not anywhere else. That is why my last request to all of you is to unite and raise your voice for repealing this draconian law from the surface of our nation.

# Session 3

# ROLE OF LAWYERS


NATIONAL CONSULTATION ON
HUMAN RIGHTS DEFENDERS
19 20 November 2011
India Islamic Centre Lodhi Road New Delhi

**MAHAKUKH ADENWALLA**
*Human rights lawyer, Mumbai*

***You call it a security threat, you call them anti-nationals who oppose the State, you target them, scare them... Not that you have anything personal against them but put fear into them, so that the lawyers stop litigating, stop defending these people, whom they have been defending***

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We have been learning about the assault taking place on the lawyers in Punjab and how it has happened in different parts of the country. Here, we have people who have been fighting against the assault which has been taking place. Mr. Amarnath Pandey who is a lawyer and has been working in Chhattisgarh and we have a assault happening on him at such a stage that he had to move from there, and he had to go running around and collect for anticipatory bail.

And there is advocate Shreeji Bhavsar from HRLN who has had a series of attacks from Delhi police. But as we know that law in the difficult situation of Chhattisgarh what Mr Amarnath Pandey has gone through. People have filed false cases against him. They are taking the case to the court and fighting in a manner by which he is being targeted for doing that. And there is Shamim Modi, she is an activist who has been working in Madhya Pradesh. She has been working with adivasis, working on their issues, trying to get their land back and even she was brutally attacked, so much so that she was not able to work on the field for the injury she underwent. That is what we want to say that lawyers and activists at a particular level are working on the grass root. I mean being a part of the struggle who allow the struggle to continue with the fight. They are playing a very important role in the administration of justice.

So, now they are being targeted. Mr. Prashant Bhushan really needs no introduction because everybody knows about the role he's been playing in fighting corruption that most of us have seen in vis-à-vis the Jan Lokpal Bill. But I feel that the greatest fight against cor-

ruption was also vis a vis the judiciary And for a lawyer to stand up in public meetings to speak about judiciary, to speak about the role of judiciary perpetuating corruption is something only a brave lawyer can do

So, this whole thing of administration of justice the State has decided that there are certain sections of the society for whom justice is not necessary You call it a security threat, you call it for those who fight against the state as anti nationals and target them, scare them, not that you have anything personal against us but put fear into us so that those lawyers stop litigating, stop defending these people, whom they have been defending. Just put fear into their minds but people who are here is not threatened by this fear and they continued with their work

Also I had an opportunity to go in the female barracks of the Ambikapur Jail (Chhattisgarh). I saw a large number of female saying they were called Maoists and Naxalites and they were arrested under the Unlawful Activities Act. They were here for 6 years I said that the bail rules are strict under the Act, but still why you didn't apply One of them said that there are 26 cases on me? How would I pay lawyers to go running around for all the cases? Another one said that I have 13 cases on me When my lawyers finished on these 13 cases, they put another new 11 cases against me So, it is quite obvious thing that these cases were prior to arrest So, till now why weren't the cases charged. And as she has received acquittal on all the previous cases so the main motive is that she has to be kept inside for as long as possible Then on those 11 cases the trial was completed and she received acquittal on Sept, 2011 But as her mother and sister came to take her from the jail and she came out, men in plain clothes came to her and picked her up and took her somewhere One day later she was presented to the DM again with two cases on her The lawyers had seen that this might happen and the entire abduction was video recorded This shows that these people are being falsely implicated because if a person receives 24 acquittals that speak for itself The legal fraternity will have to see that now this will be happening in other states too So, we need to see that how we can control it

And, as Mr Prashant Bhushan has said that judges think themselves to be a family, that they protect each one, so how they will make each one accountable. But the sad part is that the judiciary doesn't consider lawyers as their family When lawyers get attacked, they do nothing I have to say one thing on the podium that there was a very young lawyer in Bombay known as Shahid Azmi in Bombay who was assassinated at the age of 32. He used to fight for the justice of the Muslims, who were mostly, falsely implicated In any terrorist activity the only investigation that happens is to go behind young Muslims and we say that it is an issue of security so we don't interfere But this young lawyer Shahid Azmi used to go to court and fight and say that I want justice for these young muslim boys who have been labeled as terrorists and have been falsely implicated In 2010 when he was working in his office, three people came saying that we are your clients and took out a gun and shot him at point blank range and when the case came out it was said that since he fights for the anti nationals this was a patriotic killing Later three people were caught In the media Tehelka has raised the question that who benefits from the death of Shahid Azmi? Is it Bharat Nepal? Shahid Azmi had in very concerted manner had followed up the case and was able to show that these Muslims were falsely implicated

Even in the 26/11 case, two boys were picked up (Indian boys). He was able to show through this entire case that these boys were not responsible and so they were acquitted. The Committee for Protection of Democratic Rights of which Shahid Azmi was a member, and we are also members wrote a letter to the high court saying that please look into this killing. The reply was that as the accused have been caught, we don't need to do an inquiry

Now this young activist Ms. Shamim Modi working in Madhya Pradesh for the tribals, is the one who is fighting against the wroth of the state now. So now one sees that it's not only the security angle, but it goes all the way. You fight for minorities, slum dwellers, you are beaten up, killed. But we know that there are ultimately some cases for which we have to approach the court. When individuals are arrested we have to go to courts for bail

**AMARNATH PANDEY**
*Lawyer and social activist from Chhattisgarh*

***There is another big problem in our country. If you kill a Muslim and say that he was from Lashkar, nobody will care. The people instantly agree with that statement and even sympathise with the murderers. If you make an adivasi wear a naxalite uniform and kill him, the public would go ahead and appreciate the police.***

Human rights are being violated and violence is being faced by everyone, everywhere in India. It is a sad and painful affair. Discussing this issue is a source of great comfort as the difficulties I faced during the previous work that I had undertook caused a great deal of depression and anxiety. The struggle with police led to great difficulties. In 1998, the first fake encounter was done by SP of Sarguja district, situated in the northern part of Chhattisgarh. It was reported that while they were taking an accused from one place to another the Naxalites attacked them. Firing took place where the SP was injured. This was fake news as the SP had no bullets wounds and the accused was killed and his last rites were performed immediately. I started collecting evidence with the help of a fellow journalist friend, Mr. Rakesh Singh who is not alive today. The fellow who died in the encounter was a rickshaw puller, killed in Sarguja district as the first encounter. When we started working on that case, it was the year 1998, the Naxal movement had started.

The SP then called me and told me that the case against my brother was being reopened, and converted into Section 302. That particular case was basically about a friend of my brother called Anil Rai who had drowned in a pond when a couple of friends including my brother were taking a bath in. Within an hour the friends went to his house and then to the police station. After the dead body was taken out, the police conducted a dictum test. Since it took two days for the body to be taken out, it had decomposed and noth

ing could be firmly deduced. The second dictum test was conducted in Bhopal and the report was that the death was due to drowning.

I asked the SP not to compromise the Naxalite encounter investigation by distracting the police with this case since the report of the drowning was self evidential. But the police changed the dictum report and a different base and water combo was sent to Bhopal which showed negative dictum report and subsequently a case was filed against my brother under Section 302 of the CrPC. On 1st December 2009, my brother was sentenced to life imprisonment.

People are facing difficulties like this in the Chhattisgarh High Court. Hearings are delayed and justice is denied. The HC is not rendering justice. The hopes from the new state are being quashed. My brother has been in jail for one year. We tried to argue his bail petition but Justice TP Sharma said that we had manipulated the dictum report even when the information was obtained through RTI. As such, bail was denied.

There is another big problem in our country. If you kill a Muslim and say that he was from Lashkar, nobody will care. The community instantly agrees with that statement and even sympathises with the murderers. If you make an adivasi wear a Naxalite uniform and kill him, the public would go ahead and appreciate the police. In 2004-2005, this increased many fold in Sarguja. People were picked up from their home. The DGP Late Mr O.P. Rathore had started the scheme of out of term promotion for police officers. The acts of bravery that we see in most cases are for that of out-of-turn promotion. In one incident an encounter was carried on for the entire night and in the morning only two bodies of a Naxalite couple were shown to have been killed. This is a common scenario in Chhattisgarh that even though there are 40 people killed in an encounter, only the Naxalites that are gunned down are shown. The police, it is assumed, have snipers who are capable of shooting precisely even from a distance. The clothes of the dead are also burnt. But what is recorded in the video footage is the opposite. It is very difficult to work in Sarguja and I already have 13 cases lodged against me. I have filed for anticipatory bail. In one case, some Maoists took my name as their lawyer and said that they had come to kill a certain person who was a witness against me in some other case. I argued my case in the court and tried to prove my absolute ignorance about any such thing. The police officers and government officials are now convicting the lawyers who fight for human rights and against fake encounters.

Talking about legal rules consider the situation of Bastar. The then SP of Bastar who is now a DIG, had gone to Sarguja and shot a person in front of his wife. When she came to me regarding this I complained to SHRC, CGHC, the Home Minister and the Prime Minister via several applications. So they picked up a woman named Leda and filed an affidavit using her name at SHRC against me saying that Amarnath Pandey is a Naxalite and had asked me to make this complaint promising a compensation money of at least two lakhs. They kept Leda in police custody for 6-7 months. On 14th Jan Leda ran away from her house arrest as the police officials were drunk from an adivasi festival, and came to Ambikapur. She came to me and said that she was raped by Kalluri and other police officers. She was scared to go back to her village and was staying near my house. They picked up Leda from near my home. Mr. Saurav Dangi was the advocate represent

ing Leda. My petition from Leda's side was pending. The Police came to ask for NOC from Saurav Dangi and he told me about it and also mentioned that Leda does not want anything from me now. After this the judge ordered to withdraw the written petition. A certified copy of withdrawal was given to NHRC and the NHRC also closed the case of Leda. There was no investigation anywhere and when I enquired about what happened in NHRC I was told that all the complaints were burnt by NHRC after five months so no information can be given.

Situation for the lawyers of the high court and the Supreme Court have different lines and the lawyers of district court have many false cases like this against them and the survival has become really difficult. Physical as well as mental health is a strong issue for us given to this disturbed form of life. I want to bring out this aspect of the lawyer in front of everyone as it is seldom discussed.



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**PRASHANT BHUSHAN**
*Senior advocate, Supreme Court*

***The cases in Chhattisgarh need to be especially highlighted in the International People's Tribunal, where there is a repeated assault on the human rights of lawyers, tribals, journalists etc. Also, the way in which many tribals have been implicated in false cases, people are languishing in jails. It is our responsibility to take this up at national and international level***

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We have been discussing about the country and especially some states, like Chhattisgarh, northeast states, Kashmir, Gujarat and to some extent Maharashtra, where the violation of human rights is taking place. This violation especially takes place against Muslims whereby they are charged with false cases of terror attacks, which has continued for a number of years. In Chhattisgarh the tribals are implicated as Maoists, and not only the tribals but also the lawyers who are fighting for them are equally harassed by the State.

A very important issue that has come out is the creation of false cases. Throughout the country, we see that the police put false cases against people, arrested and tortured them and falsely implicated them. Such cases keep going on for years. This is a blatant violation of human rights. We had raised this issue 12 years ago when Justice Venkatachalaya was the head of the NHRC. We demanded that the NHRC examine these cases where the human rights defenders, and the tribals in some cases, are falsely implicated, but the NHRC said they cannot do anything once these cases are there in the court since it is not in the jurisdiction of the NHRC to take over court cases. To determine the solution for this problem is a big issue. Such cases show the failure of the judiciary. Especially if the person is a Muslim or a tribal, or a defender of these people, they are over looked by the judiciary. We see the failure at several levels in many cases. The media doesn't take this up or show these issues to the masses and the judiciary. The NHRC also would not bring these issues to light.

I have some suggestions, which might help with this problem. Firstly, to bring this up and talk about this issue is very important, especially in Chhattisgarh, which has become a black hole. No independent journalist can work there. The media doesn't highlight this. Some journalists do not raise these issues due to fear and mostly due to the apathy in the mainstream media. The cases in Chhattisgarh need to be especially highlighted in the International People's Tribunal, where there is a repeated assault on the human rights of lawyers, tribals, journalists etc. Also, the way in which many tribals have been implicated in false cases, people are languishing in jails. It is our responsibility to take this up at national and international level. The jails are overcrowded with four times the actual capacity. So, this is my opinion and people like Dr. Binayak Sen can help in this regard because a huge international coalition was made for his case. We can have an International People's Tribunal, which is necessary, especially in the case of Chhattisgarh.

Secondly, the issue of the failure of the judiciary that we see at various places, where no cognisance is taken, needs to be highlighted. If there is a mention of 'terrorist' investigation or 'Maoist' anywhere, then the judiciary overlooks everything else. Today, our judiciary is answerable to none. Whether the judge does anything, whether he performs his duty whether, together with the SP, s/he convicts the people, implicating them in false cases, whether he takes bribe or doesn't perform any constitutional duty, nobody can do anything as a judge is not answerable to anyone. We should understand the difference between the Lokpal, the NHRC and the judiciary. The judiciary is not accountable to anyone in the current situation. The NHRC is answerable, but the selection of NHRC is random. Making the judiciary answerable is extremely necessary. We have said that Lokpal is a completely independent body; it is independent from the government and it is independent from the judiciary too. Today if there is an allegation of corruption against a HC or SC judge, then the investigation is done by the police and the CBI, but with the permission of the Chief Justice of India. Therefore, the police are under the government and the SC said that because police is under the government therefore you have to take the permission of the CJI to protect the independence of the Indian judiciary.

But the result is that there is no investigation carried out against any judge because the chief justice does not give permission, sometimes due to the so called brotherly attitude, or to protect the reputation of the judiciary. And when this issue was put in front of the joint drafting committee and Mr P. Chidambaram was asked whether the judiciary should come under Lokpal for the investigation of corruption, he opposed it. When Chidambaram himself was the commerce minister, there was a very corrupt judge in Kolkata, Mr. Ajit Sengupta. When permission was sought from Justice Venkatachalaya regarding an investigation it was refused. The day Sengupta retired, he was arrested by the CBI. But while he was a judge, no permission was ever given despite knowing that he was corrupt. But still Justice Venkatachalaya, despite being an honest chief justice, did not give permission thinking that the judiciary would be defamed. Now, the government is not including the judiciary in Lokpal because an appeal has been made by the judiciary to keep it out of Lokpal. The government says that they will cover the judiciary in a separate bill known as Judicial Standards and Accountability Bill, which is totally useless. Not even one percent of the bill makes the judiciary accountable.



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First of all the question of the corruption of the judiciary has not even been raised. The bill provides no authority to investigate any judge accused of corruption. The only thing that has been said is that if there is a complaint of misconduct, then it should first go to the oversight committee, which is dominated by the sitting judges and the attorney general, which means there are two problems. One, it is not independent of the government and two, there is a conflict of interest as it is dominated by sitting judges. Lokpal, however, is an institution, which is free of both the government as well as the judiciary. The judges say that the judiciary cannot be accountable to anybody as they have self accountability. It means only the judiciary can decide if its brother or friend is corrupt or not. In a case in Gujarat, a case of torture came before them along with sufficient proof that people were beaten up in prison and that their bones were broken. However, when the matter was brought before the court, nothing was done as judges are aware that they can do anything without any repercussions.

Until the judiciary is made accountable to an organisation independent of the government, nothing can be done. Lokpal is one model. Another model that we presented was to elect a person like a retired SC judge. The election can be done by the judges of the SC and person elected should be completely independent after election. A constitutionally independent authority should be made. The second person should be selected by the chief justices of HCs, the third person should be selected by the union cabinet. Fourth person should be selected by leader of opposition of Lok Sabha, Leader of opposition of Rajya Sabha, Speaker of Lok Sabha and Vice President. The fifth person should be selected by the Lokpal, if formed, or by CEC, Comptroller and Auditor General, NHRC Chairman and others like these.

There are many models. But the judiciary is adamant about having no accountability apart from self-accountability. Government is also keeping them unaccountable. The time has come, when the people who are suffering from human rights violations, the real stakeholders, the public, take up a stand like formation of Lokpal and voice their opinion. The judiciary will have to be accountable, you have to make an organisation which makes the judiciary accountable.

The NHRC also needs improvement. The NHRC has two problems. The first problem is that the government selects the members. The leader of opposition is there in the selection committee. But the leader of opposition also wants the kind of person who is weak and doesn't have a backbone or he should be corrupt. So, we see that after Justice Verma, all the selections made for the chairman of the NHRC were either spineless, completely corrupt, or both. People have stopped going to the NHRC in case of need and therefore it needs to be seriously improved. We have suggested Lokpal, in which there is a very broad based independent selection committee. Where there would be 11 people and only one person from the government, the PM and another politician, the leader of the opposition, and nine other independent constitutional authorities who are independent of the government and also independent from the political class. Unless such selections are made for the the NHRC, there is very little chance of improvement. Secondly, the NHRC has no authority that it can order or punish someone. Similarly, the press council has also not been given any authority.

The process of making false cases against people by the police should be made a very serious crime under IPC. Also an independent body or NHRC should be given that task of free and fair investigation. It should be compulsory that the investigation should be on priority, should be fast tracked, the trial should be fast tracked, and the punishment should be up to life imprisonment. The police should not investigate false cases where the offence is not a serious one.

Also India should ratify the treaty of the International Criminal Court where people like Modi should be tried. We should talk of cases like Chhattisgarh at an international level. We should have a national network to defend the human rights defenders, lawyers, for which HRLN is taking a good initiative, such that whenever there is an attack on a lawyer fighting for human rights, like what is happening in Chhattisgarh or even in SC, then lawyers from other parts of the country can be brought to assist his/her defence.



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**SHAMIM MODI**
*Lawyer and social activist from Madhya Pradesh*

***I myself am facing all sort of serious but false criminal charges for dacoity, loot, attempt to murder, kidnapping, criminal trespassing and so on. I am implicated in all kinds of serious criminal offences, except for rape. When this issue was presented in the High Court of Madhya Pradesh, the honourable chief justice couldn't stop smiling. The question is not whether I would be acquitted in all these absolutely false cases, but that why should I go through this harassment and contest these cases for decades if I am innocent?***

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We must realise that we are working in the global environment where, on one side we have people who are dying due to starvation, and on the other hand we have a whole lot of people suffocating in their surpluses. Our strategies as social activists, struggling towards justice for all, must keep this in mind as we advocate for the most disadvantaged and vulnerable sections of our population. As an activist with the *Shramik Adivasi Sanghatana* for the past two decades, me and my colleagues at the sanghtana have strongly felt the need to work on the strategy to deal with the state repression on a broader scale. We do have a strategy in place and that is exactly the reason why the sanghatana has survived till date. But with the "globalisation" and privatisation forces intensifying, we too need to build up on our strengths and put more efforts into networking and "resource" building.

We have witnessed Human Rights Defenders (HRD) being victimised by the state machinery, especially the police for exposing the malicious acts of commission and omission by the corrupt nexus of the interest groups. Implicating the activists in false and frivolous criminal cases is the modus operandi of the corrupt state agents to harass the innocent *adivasis* and the activists struggling for justice and exposing their nexus. They are often heard saying that they do this "to teach the *sanghatana* and its members a lesson" and frankly speaking they really know where it hurts the most. Since *Shramik Adivasi Sanghtana* (SAS) works with the *adivasi* community in Betul, Harda and Khandwa districts of Madhya Pradesh, much of the conflict is with the forest department, which

still behaves like a feudal lord and continues with the colonial legacy All the constitutional protections and statutory provisions make no difference to their perceptions and attitude towards the forest dwelling communities The Forest Rights Act, 2006 may have superficially brought about some changes in a few areas, but the situation of the adivasi communities in forest areas, especially in forest villages of Madhya Pradesh, has worsened.

What does one do with progressive laws if the implementing machinery is not in place? The serious problem is that the rights oriented approach of the people in governance is lacking Each time SAS exposes the corrupt practice or inhuman behaviour of the forest or police officials in the area, a number of false and frivolous cases are registered under the forests laws against the activists instrumental in exposing them So much so that at present there are more than 40 50 cases registered against the adivasi activists who have been instrumental in bringing the serious lapses to the fore Each issue, either of non payment of wages or inhuman and violent acts of the state agents, is followed by spate of false and frivolous cases against senior activists and other members of the sanghatana

The new strategy adopted by the forest officials, to intensify the harassment to the adivasi activists is to implicate them, not only under forest laws but also under Wild Life Act (1972) and Destruction to Public Properties Act, 1984, so as to make the offences non bailable We must understand what are the implications for the tribal activists and for other human rights defenders working with forest dwelling communities, how to contest these spate of false cases. The amount of time, money, hardships and most importantly, the humiliation at the hands of the State agents they face can put to shame any citizen who believes in the sanctity of the Constitution.

Somehow, the gross abuse of the process of law to harass the innocent forest dwellers has missed the attention of our judiciary also It is before the judiciary that the forest department officers present their "offenders" implicated under various false offences, which are bailable and compoundable The forest officers sometimes demand three consecutive judicial remands and the court grants them without any questions Much of the time and resources of the HRDs are spent on contesting these cases Implicating rights defenders in various cases also deters others from extending their support to the cause of justice for all.

I myself am facing all sort of serious but false criminal charges for dacoity, loot attempt to murder, kidnapping, criminal trespassing and so on I am implicated in all kinds of serious criminal offences, except for rape. When this issue was presented in the High Court of Madhya Pradesh the honourable chief justice couldn t stop smiling The question is not whether I would be acquitted in all these absolutely false cases, but that why should I go through this harassment and contest these cases for decades if I am innocent? Since in forest offences the complainant is the investigation agent also, the innocent victims cannot expect much from the trial Manipulation is the rule In most of these cases, though the judicial officer believes in the malicious acts of the States agents, he himself feels helpless at the hands of the judicial procedure This is exactly what gives them confidence to abuse the process of law

My concern is that when a case seems false and frivolous on the face of it, and still our



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justice delivering apparatus has devised no way to protect the innocent from being victimised, not just once but a number of times, then it becomes a mockery of the constitutional guarantees and the entire criminal justice system

Also the State agents involved in manipulating false evidence to implicate innocent *adivasis* and the activists have nothing to fear, because no action has ever been taken in such malicious acts. Therefore, the gross violations continue with impunity. Our strategy to deal with the protection of the human rights defenders must emerge out of our study of the modus operandi of the perpetrators of the crime and also after consulting the grassroots level activists who are being victimized. This I say, because at the time when we were facing spate of cases against our members and ourselves, we were on a desperate hunt to find a lawyer who would represent us without demanding a fee which we could not afford. Also someone who would understand our rights based argument on the forest adivasi conflict

We must understand that when an activist is attacked, it is not to scare the activist alone, but the people around him/her – the support structure around such activists. They very well know that no matter how much they harass you, you will never get scared. But the people around you, who witness this harassment and humiliation will get scared and back out. They usually identify the support network and break the link. For example if *adivasis* are grossly injured by the violent acts of the State agents and your insistence of registering a FIR is responded with more violence and persecution, because the perpetrators are so called "public servants", then all your effort to hook the culprit will add to the list of cases against you. We have been humiliated and harassed in one such incidence in Harda District and the so called "civil society" looked on as it clicked photographs on their mobiles.

So we have to show our strength. We should have a group of lawyers to fight for us who are sensitive and good. After identifying these people who are ready to help, a strategy should be made. We should call officials who help us in such meetings. There are many government officials who have stayed in the background and have helped us a lot. So we need to prepare a community of human rights lawyers who could handle these issues and advise the HRDs. Prashant Bhushan has been supporting us for the past many years. Similarly, others at the state and district level have stood by us. But the problem is that there are too many cases to handle. If there had been a fact-finding enquiry by a human rights group to counter the false investigation of the State agencies, maybe the malicious intention would have been exposed and the human rights organisation like us would get some relief

When I was arrested on these false charges and taken to Harda jail, within five days I was shifted to Hoshangabad jail where I was harassed because the inmates had bee instructed by the jailer, "isko andar theek kar do" (fix her right inside the jail). The lower judiciary had not only rejected my bail application on the absolutely false cases, but also passed adverse remarks on us and our mode of functioning

It is said that state repression usually strengthens the sanghtana and motivates them to continue the struggle. Yes, it is true in the beginning, but not for 5-6 years. I must point this out here that most of us are middle class activists, who have our urban friend circles



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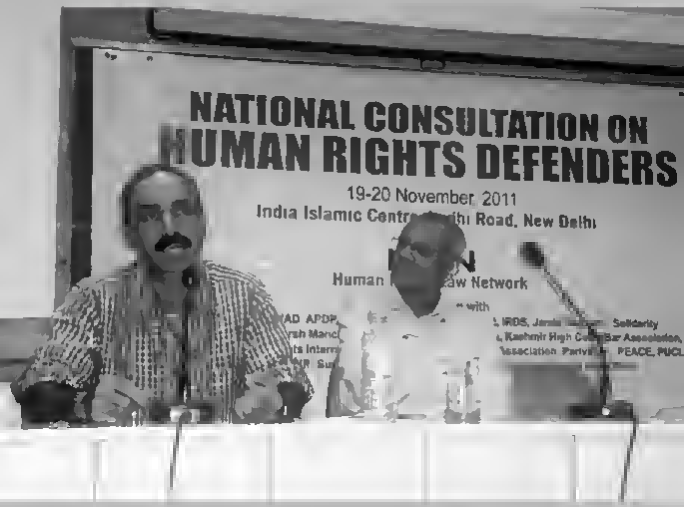
and supporters always ready to help us, monetarily or otherwise But rural based adi vasi activists choose to fight at the cost of their families and basic survival But for the sanghatana, such and activist has no other support structure We have to seriously think about them

I am glad that so many of us are here to deliberate on the strategy to deal with the threats that the HRDs are facing, but something concrete should evolve out of this fantastic effort. May be we can visualise a "Human Rights Watch" group, which would spring into action each time human rights are violated..

As somebody has rightly said that "our scars have the power to remind us that the past was real" Here we all have such memories with which we can take our fight forward

# Session 4

# POLITICS OF HATE AND DISCUSSION ON COMMUNALISM AND SITUATION IN GUJARAT


NATIONAL CONSULTATION ON
HUMAN RIGHTS DEFENDERS
19-20 November, 2011
India Islamic Centre
Road, New Delhi
Human
aw Network
with
Solidarity
PEACE, PUCL

**MALLIKA SARABHAI**
*Actress and social activist from Gujarat*

***We will somehow tolerate hatred and everybody who lives in Gujrat will learn tricks to fight it. This wall of silence and this wall of cowardice is something that is so difficult to face that it is almost suffocating. People think that I am only passing time through activism. But all of us know that our lives are at stake***

People think that the city of Ahmedabad is safe for women. But the city stands third in rank as the most dangerous city for crimes against women. My friends in power say that it is still not as unsafe as Delhi! But 30 years ago, when we were in college we used to ride on a two wheeler and go to a tea stall at 3 a.m., wearing jewelry, and our parents never even asked us about where we went. They didn't worry. From there we have come to this Ahmedabad.

If we start comparing Gujarat to Chhattisgarh, it gives the wrong perception and we fall into Mr Modi's *mayajal*. If Gujarat is being praised today it is based on the false promise that GDP is what the growth of human life is all about. In reality, there is an environment of fear.

During the 2002 genocide, I was not present in the state as I was performing in Kolkata. Our institution Darpana is situated on the banks of the Sabarmati river. On the opposite bank is a 100-year old Muslim slum. There were only three people in the office during that time and they were texting me that "the entire slum is on fire." I came back on the 4th of March, met many friends and saw a huge number of video clippings and thought that something needed to be done. I had never been to court or fought a case. I was an activist but not through legal means. I, along with two friends, decided that we should immediately file a PIL. So on the 1st of April 2002 we filed the first PIL in the Supreme Court.

A few months back, through Sanjeev Bhatt's testimony for the Nanavati Commission, I found out how immediately after this, Narendra Modi had withdrawn secret service money to bribe my lawyers and attempt to derail my PIL.

As soon as I filed the PIL, the harassment against me, my institution and my children started. In April 2002, we decided that people should gather together and think of long range strategies against the politics of hatred. We sent out emails across the nation inviting all peace loving activists to come to the Gandhi Ashram for this meeting. On the 7th of April, around 300 people came, from Chhattisgarh, Bihar, Mumbai and Chennai. Even local Muslims leaders who had not come out of the ghetto for two months gathered at the Gandhi Ashram. In the room next to us there was another peace meeting taking place, organized by Gandhians and run by Narayanbhai Desai. At 11.30a.m., a colleague texted me saying that Medha Patekar was in town and was asking if she should come. I requested her not to come as the entire issue would then shift to Narmada Bachao and would be politicised in the wrong way. Anti Medha feeling exists amongst Gujaratis and the genocide was a much bigger issue than the Narmada. I didn't want the meeting hijacked. I sent the message unequivocally. At 1 o'clock, just before we broke for lunch, Medhaji arrived. I said, "Medhaji we are breaking for lunch in five minutes and I request you to leave."

We broke for lunch and within half an hour, when we came back, there were hundreds of gundas already there and (I was told) Chimanbhai Patel's wife had sent her own pro Narmada goons because Medha Patekar was there. There were journalists too. The Aaj Tak journalist Dhimant Upadhyay, misreported and said, "Malika Sarabhai had invited Medha Patkar." Within minutes people were trying to beat us up. Medhaji's head was grabbed by the man who later became Mayor of Ahmedabad, and banged into a wall. Somebody grabbed hold of me as I tried to stop him and two blows were wielded on my head by a stick. One of the people from Darpana took me to the river to escape and we rode a scooter through the sand, to Darpana, 10 minutes away, only to find that there were 250 – 300 saffron clad people throwing stones and bombs at the institution.

All this happened only because a news channel misreported the event nationally. I called PC Pandey (DIG), but he refused to take my calls. I called the Aaj Tak channel in New Delhi but by that time it was too late and all the channels were reporting it, rather misreporting it. It was horrible, because it is one thing to put yourself in danger but it is a completely different thing to put others in danger.

I had to go underground and in October 2003 a case of human trafficking was slapped on me. It was the day before Diwali when the courts closed for a break, that an arrest warrant was issued against me. A press person called me and asked me to get out of the State. It was like in the film Sound of Music. I had to hide under the carpet in the boot of a car. I am too recognisable to go anywhere unnoticed. The border police had been warned. We finally got out and went to Udaipur. We changed cars and then went to Jaipur and for the next 18 days while my cell phone was being traced, I was on the move, trying to escape arrest warrants, the police across the country had been informed.

I returned home on the 1st of November when the court opened and an order was issued that I was not permitted to leave the city without the Magistrate's permission. My passport was taken away and if I had to leave the city I had to get interim permission from the high court. They knew perfectly well that I was a dancer and that I had to go for dance performances. The whole idea was to stop my shows, to kill a non-profit organisation by



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stopping its funding. Even today, just to stop the money flow, if any Corporate type sets foot in Darpana, within 15 minutes a call is made to their office from the CM's office, saying, "If you want to do business in Gujarat, don't talk to Mallika Sarabhai."

I have been charged with many cases. The cook of my institution's cafeteria said that I had stolen two saucepans and the police registered an FIR. Apparently today, cases of rape and murder are not considered worthy for FIRs but the case of utensils is! For many months, I would have to go to the Court seeking permission to go out of town for my performances. The court opened at 10.30a.m. and the flights left by 9.00a.m. The whole idea was to jeopardise my performances even if the court gave me permission by 11.30a.m. Nobody in Gandhinagar would take a call from me. Nobody in any police station would actually listen to us. In my institution 25-30 women come every month seeking help with domestic violence cases. Even today, if I go with them to the police station, nobody dares to be decent with us. Similarly, if I call them, there is nobody to answer the phone.

Another thing that I want to share is that in the city where my parents have practically created each and every organisation, the people are so very afraid that during the period that these cases were going on against me, whether they met me at the airport, station or even on the road, they dared not even look me in the eye and say hello. "If this happens with Mallika Sarabhai then what would happen to us or to the other thousands living in villages?" Nobody would answer phone calls. Not a single friend had the courage, not a single Head of an institution who talked of liberal values and who had a 'good' education, not a single one of them would pick up a phone call from me. They were afraid that their awards would be lost, their funding would be lost and their professorship would be taken away. That is what all of us have to face and I think that we need to acknowledge that this is something we face even today. We will somehow tolerate hatred and everybody who lives in Gujarat will learn tricks to fight it. This wall of silence and this wall of cowardice is something that is difficult to face that it is almost suffocating. People think that I am only "dabbling" with activism. But all of us know that our lives are at stake. Most people do not want to become full time activists.

We want a country where there would be no need for activism. Where we don't feel the need to fight, such should be our country. But here we do have to fight, and we put many things on the line and fight. I remember, I didn't allow my child to cross a road on his own because the entire environment was RSS induced. When my Muslim friends used to come over, it used to be instantly reported. If I had Muslim drivers, that too used to be reported. So, this is the kind of gestapo network we live with in Gujarat today. Every phone is tapped, not only ours. And we live with that, we joke about it, because there is no other option. But Gujarat today is not a jungle state. It is a very clever Gestapo state. It's not like Chhattisgarh, where it is like the wild West. This is an incredibly well thought out, well strategised, well funded method of killing a State. So, if anybody tells you differently, do not believe them.



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**SANJEEV BHATT**
*IPS officer, Gujarat*

***Talk of a communal riot in Gujarat. If a particular community is under threat, who is the first in line of defenders? The police, the enforcing agencies. There are situations where police acts neutrally and very effectively. But that is not to the liking of the people who have designed communal violence to their desired outcomes. Thus the police becomes a target.***

# OPEN SESSION WITH SANJEEV BHATT

**Mallika Sarabhai:** *You have been in Gujarat police for 20 years. Was it always spineless?*

**Sanjeev:** I have seen this transition take place in Gujarat. It is a politics of hatred and intolerance. This intolerance started developing sometime in the early 90s. You mentioned Medha Patkar and the fact that you were a bit defensive about Medha Patkar as it would attract negative feelings. That is the background to Gujarat. Medha Patkar was exposing a very just cause, though very remote to us. She is a very dear friend and two of her colleagues, Mr. Himanshu Thakkar and Mr. Shripad Dharmadhikari, were with me at IIT Bombay. So I had an excellent working relationship with her. But the then Chief Minister, Mr. Patel, was not happy with the way I attended the situation. He wanted strong arms tactics and I refused saying if she is not contravening the law of the land I will deal with it in my own way. They were only activists, not criminals. Even after their arrest was made, there was no substantial case against them according to the law and I released them immediately. The CM, however, was very perturbed. He wondered how a young SP could do this on his own? I was summoned to Gandhinagar and the ACS Home, Mr. Balkrishnan, was present there. This was in '93. I went in uniform and the CM said that 'you don't even listen to the CM.' I said, 'Sir I haven't joined the police force to listen to you.' He was taken aback. He asked me whether I should be sent to England, Paris or New York next? I didn't like the tone in which he spoke, so I spoke back in the same tone. I said, 'you send me to hell, but I will do work my way' and I turned around and walked out. That was intolerance. My wife and I were prepared to receive the transfer order after this incident. The very next day, I was relocated as the DCP of Surat city, which is one of the most sought after and lucrative posts in the state. The CM, who did

not want to tolerate me at Narmada, understood that I can be used at a place, which is communally sensitive. Surat had just come out of a serious communal riot. So, there was a middle ground where you could act in Gujarat at that time. There was some space. That space is closing now. It has come down to no space at all. Now you have reached the stage where you are either with them or against them. They have stretched this logic a little further. The party in power in Gujarat right now claims to be a nationalist party. So anyone who is not with them is not only against them, but they are also anti nationals. People like Mallika Sarabhai and me are considered anti-nationals in Gujarat. Medha Patkar is an anti-national because she is anti-Gujarat. She is anti-national because she is with some people who want their voices heard. This intolerance has been increasing since early 90s and now it has fine tuned into a reality, which has to be experienced and believed. Gujarat is indeed very vicious, it is not Chhattisgarh, it is not the wild west. It is intolerance and hatred fine tuned to perfection and they want to make example of people like Sarabhai who have been struggling for a long time not just to damage them or us, but to ensure that no one should dare to raise their head in Gujarat. Gujarat is the testing field for such politics and if it succeeds there, they would like to replicate it all across the country.

**Manoj Mitta:** *Some people feel that you are a misfit amidst human rights defenders. Its not only because you are a police officer, it is also because SC rejected your application and you are facing custodial death allegations. Seemingly, you don t belong here. What made you come here despite that?*

**Sanjeev:** I am glad that this was brought up. This is not a custodial death. Due to historical reasons, the police have been placed in adversarial roles. This is colonial legacy. The police regime post independence is perpetuated to promote vested interests. When we talk about defenders, police is the first form of defence. As far as human rights are concerned, that is what I think. Talk of a communal riot in Gujarat, if a particular community is under threat who is the first in line of defenders? The police, the enforcing agencies. There are situations where police acts neutrally and very effectively. But that is not to the liking of the people who have designed communal violence to their desired outcomes. Thus the police become a target. Coming to a particular incident of 1990s when I had just started my career. I was an additional SP in Jodhpur. L.K. Advani took out his yatra on 24th October 1990 and was stopped in Bihar by Lalu Yadav. A very brave act. On 25th, there was violence across the country, more so in Gujarat. On 30 October 1990, the goons of RSS and BJP tried to attack Babri Masjid for the first time. Mulayam Singh acted with great firmaness. Lives were lost, but law prevailed. Mulayam Singh was made Mullah Mulayam overnight. 30th October was Bharat Bandh. Jamnagar had no history of communal violence but the VHP had to carry out a capacity demonstration. So in a place called Jam Jodhpur they burnt a mosque and 15 Muslim houses and misbehaved with Muslim women. I was asked by my control room to rush there though it was not my area. We got curfew implemented there and 133 activists of VHP were arrested. Twenty five had sustained serious injuries while being arrested. Injuries like fracture were sustained during lathicharge or while trying to escape or jump from the places they could

not. Seven had serious burn injuries while committing arson. So, 32-33 of them were sent to a primary health centre and the man (VHP activist) who died unfortunately, was not amongst those. All of them were presented in front of the magistrate the next day and no one complained of any police atrocity. They were then sent to judicial custody where they were kept for a week. When someone enters a jail they are physically examined and any mark on the body is enquired if it's a police injury. If you say yes and if they feel that something is being concealed, they would send you to the jail doctor and then to the hospital for treatment. This man was examined and no injury was found. On the 3rd day he complained of backache and difficulty in movement. So he was sent to the city hospital where he was treated as an outpatient and given some pain killer. He came back. After seven days all were bailed out. He went back to his home in Jam Jodhpur and after 3-4 days developed some problem and consulted a local doctor there. The local doctor says that there is some problem with his kidney that needs further examination and sends him to a place called Rajkot – which is the hub of Saurashtra. There he is admitted to Gondia hospital and treated by a nephrologist and on the fifth day of his treatment, that is the 12th day after his release from judicial custody, he dies at the hospital while undergoing treatment for a kidney ailment. No complaint, no action, no medical legal ailment till then. So after his death his dead body was handed to his brother who was taking him back to Jam Jodhpur. On the way they stopped at Jamnagar where they were met by few Vishwa Hindu Parishad activists who told him that if you get a post mortem done on his body you will get a compensation. This incident happened on 30th October and I was transferred on the third because Jam Jodhpur was the constituency of Chiman Bhai Patel. So when he arrested these people, the CM told me to release all of them and not apply any provisions of law. As a young additional SP I refused to do that. On the same evening 87 Muslims were arrested and the same provisions of law were applied and it was simply unfair. I wanted to act impartially. Only then could I control communal riots. So, on the third day I was transferred out because on the first day the CM had to seek a vote of confidence. He had assured them that the boy will be transferred out so that he got the vote of confidence. After 15 days of my transfer the person died and an FIR was filed. That became the FIR and that was initiated by the CID. Then during some ongoing riots at Bharuch, the DG said that he will have to arrest me because of the allegations, which were being made and gave me anticipatory bail. I immediately went to Ahmedabad, to the residence of Justice N J Pandya. He granted me bail instantly. That was my first meeting with him and I want to note that we have such people in the judiciary also.

After that the CID crime branch asked for sanction to charge sheet. The BJP government refused it saying that the officers had acted in good faith. So, a closure report was submitted to the judicial magistrate who deferred it under some tremendous pressure and said that I don't accept the closure report and committed the case. The state of Gujarat, on the eighth day, immediately reoved an application before the sessions court, saying that the officers had acted in good faith and the order needs to be revised. All these years, the revision application was pending. It was argued three times and every time the judge was about to pass an order he was transferred. In 2011, the government felt that the case needed to be withdrawn because they wanted some kind of prosecution. This is the case of custodial death. This is the case where the subordinate officers and I acted as defend



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ers of human rights of a particular section of people. I would say that even the police can be the defenders of human rights and people like us in the police who take an impartial stand and are hounded for obvious reasons, also need to be protected.

**Anant Asthana:** *I have had the occasion to meet police officers and talk to them about injustices prevalent in the system and realised that they feel guilty and carry that guilt all the time. Either they are not strong enough or do not have an occasion to stand up. You, yourself, took eight years to speak up. I also understand the internal struggle you must have gone through, during all this time. Will you please talk about it?*

**Sanjeev:** There was no internal struggle at any moment at all. Not in 2002, not in 2009, not today. I was very clear then and am very clear now. In 2002, I was in Intelligence Bureau when the riots took place. It was my third year at the IB. I was the oldest serving officer there and when things happened on 27th and the instructions of the CM came out I was so sure that things are going to get very wrong. That is when I started documenting things. I continued in the IB till September 2002. We documented everything which was to be documented. We sent out advisories that had to be sent out as intelligence officers, as there your role is different. As an intelligence officer it is an advisory role, where you collect and pass the intelligence and you create and send reports to the central agencies, the NHRC etc. By 17th September, midnight, my then boss Mr Shreekumar and I were transferred out and we received orders saying that you do not even need to come to the IB office. your things would be sent to you. They were afraid that we would come and take out more information.

In 2002, I had put in 13 years of service. I was brought up in a very secular family and went to a set of very secular schools. I never thought of caste, creed or community. I was All India rank 35 in my civil services exams, I could have opted for any service. I opted for police because that was my only choice and I joined it with passion. I take pride in every decision I took till date and in 2002 you see that everything in life that you stood for, being turned on its head. I realised that the state was not only abdicating its duty but was complacent in destruction of life and property. This is when I withdrew myself from the IPS fraternity of Gujarat. I did not want to belong to that band of bandits. I had to wait for my time. I sent out feelers to friends, to get me called in front of the commission of inquiry since I knew so much but that did not work out for some reason. In 2013, when I eventually got to hang out certain aspects of the SIT's functioning, I filed an affidavit at the Supreme Court and it became public on a particular day. On the same day, I received a call from Mr. Mukul Sinha. That is when we connected and decided to take issues ahead in the commission and I presented myself in front of them. Its not a question of my being silent, rather I was waiting for my time. Being an intelligence officer, I could not have spoken out unless put under a binding legal obligation.

In 2009, the SIT summoned me for the first time when perhaps Mr. Prashant Bhushan went through the SIT report. In 2009, I had told the SIT that if you want to know the things, which I am privy to as an Intelligence Officer, then you will have to record my statement under the CrPC and put me under a binding obligation, whereby the complaint of Mrs. Zakia Jafri should be treated as an FIR. That was observed by him and

brought to the notice of the court. Then the court thought it fit and directed the SIT to do that. So, again in 2011, they started recording my statement under some other offences, not that complaint, but some other related offence, but they took my statements under the code of penal procedure. That is why the delay, but I came out with all the facts which I had, which I thought, I should be conveying to that SIT in that format then in 2009. It took me seven years.

The question that needs to be asked is why I was not called all these years? This is something, which all of us, even the activists, should address.

**Prashant Bhushan:** *In your assessment, what percentage of the police in Gujarat has become communalised in their thinking and what percentage behave like this out of fear of reprisal? What is your assessment?*

**Sanjeev:** This is a very pertinent question. I, as an officer who have served in Gujarat, and I, who belong to Gujarat, don't believe that the police force in Gujarat is communal. I firmly believe that any force, anywhere is good. What is good, bad or indifferent is the police leadership. The force is good, this force can be transformed. But we need to provide them good leadership. What happened in 2002 was that we taught the police inaction, that was something unprecedented, there have been times when we allow them to overact, we even instigate them to overact, but overaction can be condoned, controlled. But once you teach any uniform force inaction, that goes against the very basic structure and the reason for existence of a force. They taught inaction to a force and then the inaction got rewarded. That is the most dangerous thing to my mind. So, the force is not communal but the officers by and large are. By now I think very few people are left, who would not toe the line of the government, they are not communal officers, they are officers who are afraid to take a stand. Tomorrow, if there is a change of the government, the very same set of officers will change colour from saffron to green, anything other than khaki. That is I think the question of having the inner strength and courage to stand up and there is the consequence of what you believe in. Again, when all of us join the police force, most of us come with ideals and passion. But then as we grow in service, we try to justify a lot of things that should not be justified and get stuck in a loop.

**Prashant Bhushan:** *But we had this People's Tribunal on terror investigation in Hyderabad in 2008 in which one of the recurrent themes emerging from the testimonies which were given there was that when the police arrests these people falsely, these Muslims for those terror offences, they often torture them and while torturing them and beating them up, they utter abuses which are clearly indicative of a communal bias or a communal mindset. That is why I was willing to understand, because from Gujarat also, the same kind of stories, even in the incident where 50-60 people were beaten up in the jail, same kind of thing emerges. So, that is why I find it a little surprising that you are saying that there is no communal mindset among the police in Gujarat. I find it a bit surprising. That is why I wanted your honest opinion.*

**Sanjeev:** I will just clarify and add to what I said. The police in Gujarat like in any other state, come from the same social milieu. So, they do carry some biases in their minds.



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they carry certain prejudices against certain community. But that would not be sufficient to brand them as a communal force. They have biases like each one of us, we could have people in our own families who would be communal. Many people have biases against Muslims. I think this is a backlog from few centuries, from past experiences, from folklores in Gujarat and then again partition. Sindh being the adjoining province to Gujarat. Lots of people have migrated from Sindh to Gujarat during partition and they brought lots of tales from there. So, there is an atmosphere where there is a latent hatred for the Muslims which is reflected elsewhere also. So, the force can be called biased to that extent. But even that bias is not much; it will not impact their functioning, if it is led properly. Because, I have led the same force on so many occasions and if they see the officer leading from the front enacting impartially, the force will do much more than you.

**Navkiran:** *Firstly, I would like to say that what Mr. Sanjeev Bhatt has done is a wonderful job and he has shown his guts. And we hardly find such officers in the police cadres and it's quite strange that he is there. We are asking too much from him. Whatever he has done is more than enough. Secondly, we are saying that the state is communal towards the dalits, towards the Muslims? But, as a minority we know that the state is communal towards all the minorities. The whole nation watched what happened to the Sikhs. There is still a bias towards the Sikhs. Even though the Prime Minister is a Sikh, we do not consider him to be strong enough to protect our religious rights. So, all the minorities are still feeling that even after 64 years of Independence of India, they are not preferred in this country. Dalits, Muslims, Sikhs, Christians, all the minorities feel the same. Secondly, if the state is not communal, why is that whenever a minority is killed by the ruling party, the concerned ruling party gets maximum number of votes in the coming election? These questions need to be considered.*

**Sanjeev:** As far as the communalisation in Gujarat, as Mallikaji has said that the state is becoming highly communal. I would tend to disagree a little there. The people of Gujarat have a communal mindset to the extent that they can be easily exploited or swayed. I won't brand them as communal as such. We are talking about the divisive politics of hatred. If there are to be electoral gains from the politics of hatred, be it the hatred against Sikhs, the hatred against Muslims, then I am sure no political party would like to overlook an electoral gain. That is what happened in Gujarat. In Gujarat, you see, there has not been a single communal riot since 1993. It is not that Gujarat is free of riots. Except for 2002, since the BJP come to power in Gujarat, there has not been a single large scale communal riot. So, this is the question that people of Gujarat should ask themselves that is Gujarat free of communal riots because of the present government or is it free of communal riots despite that or is it the people who were engineering the communal riots, who were the benefactor of each and every riot, which eventually brought them to power, that we don't have any communal riot since 1993. The year 2002 was a completely different orchestration which followed a very unfortunate incident of Godhra. But that way an orchestrated thing was not a communal riot as such. Because, we know how riots take place. We have dealt with riots. We have studied the exact process by which the riots are created, are perpetuated. This was something different. As long as there are parties who gain from the politics of hatred and division, this is bound to continue. So, people

need to realise as to what each of these parties stand for and start choosing between the 'lesser devils' till we reach a stage, when we have a party, which reflect our thoughts and ideals. So, all of us have to be very active in politics. In a democracy, we have to be very active participants in politics and be very vigilant, so that is the price you have to pay in a democracy.

**Gayatri Singh:** *There are two questions, one is that there are few officers who also are upright and honest as you are, but are hesitant to come forward, what would you suggest, could be done to encourage them to come forward? Second question is what sort of help you expect from an organisation like ours, which would help you in the struggle you are engaging in?*

**Sanjeev:** What I feel is there are so many officers who would like to follow the rules as well as the dictates of their conscience. But at times, may be they feel that if they take a stand, they may not get the desired support from colleagues or if they are sidelined or singled out, they may not be able to take the pressure. So, if, yes, friends like you stand by them and if they are provided the kind of legal help and assistance, which they would require eventually, because when the state starts hounding them, they will need to be supported.

**Colin Gonsalves:** *Did you get any support from your officers?*

**Sanjeev:** I am told that when I was in jail the IPS Association of Gujarat met and they passed a resolution. Then three of my batch mates were asked to come and meet my wife. That is when they came and expressed solidarity. So, I am very happy that the IPS Association met in Gujarat and passed a resolution, but it is also this other side of the coin that my own batch mates had to be empowered and told by the IPS Association that yes, you are empowered by the Association, please go and meet his wife. I would have done that on my own. Had it happened with any of my batch mates or any other officer, I would have gone on my own. I don't need a protection that I am going only because the Association had told me to go or not otherwise. So, that is another side of the coin.

**Unknown Participant:** *In 2002 riot, many of the fact finding reports indicated that it was a planned attack. Many of the Muslim community members, the business community members were attacked during this short span of time. At that time, you were there in the Intelligence Bureau. Many people suggested that it was the failure of the IB that the government could not get any indication of what was going to happen. What do you think?*

**Manoj Mitta:** *If I have to repeat my earlier question, was it part of your legal duty to be party to Modi's barbaric act as in Maliks case.*

**Sanjeev:** To understand Gujarat riot of 2002 you have to differentiate the incidents of 27th February, 2002 that happened in Godhra, and the incidents that followed. On 27th February 2002, we had no intelligence, no information even about the returns of the karsevaks. There was no information from the Uttar Pradesh Police that this first batch of karsevaks was returning. This was the very first batch of karsevaks which was to come



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back. We had been sending information, we had been sharing information with the Intelligence Bureau at the centre, with the UP police and all along the routes about all the batches of karsevaks, which were being dispatched, from Gujarat. So, this was the very first batch which was returning. So, it was expected of the agencies there to inform us, in turn, that this is the first batch which was returning. But we were not informed. No one was aware about it. So, as far as the 27th February incident goes, everyone was caught unaware and that is exactly why and when I also studied the incident. Thereafter, I concluded for myself and also shared the reports with the investigating agencies as well as the SIT that there was no sort of imagination. You can call that an intelligence failure as far as the information pertaining to the return of karsevaks goes. But the 27th onwards, we were very clear about how the situation was developing and there was no intelligent failure at all. We knew exactly how it would go if it was allowed to go in a particular fashion and it did. So there was no question of intelligence failure from 27th evening onwards.

# Session 5

# ASSAULTS ON ACTIVISTS

NATIONAL CONSULTATION ON
HUMAN RIGHTS DEFENDERS
19 20 November, 2011
India Islamic Centre, Lodhi Road New Delhi
HRLN
Rights Law Network

**TENZIN TSUNDUE**
*Free Tibet activist*

***Today the Tibetan struggle is almost united on the inside. People like us who were born in India have had the freedom of being educated and recreate the struggle. We are grateful to India and its people to help us revive the hope of being free eventually.***

I was born and brought up in India as a Tibetan refugee. I am a bit nervous to represent the Tibetan voice and tell you about the Tibetan struggle. I will summarise very briefly what is happening to Tibetans and to activists there. I live in Dharamshala (HP). Till now we have been discussing the northern part of the country; now I want to focus on the Himalayan region especially Dharmshala and the Indo-Tibetan border. The whole idea of Dharamshala was started in 1960. When I talk about Dharamshala I mean the political Dharamshala, which has now become a big tourist centre. This is the place where the Tibetan freedom struggle is based today and where Dalai Lama and the exiled Tibetan government are located in India.

Some of you might not be aware about the Tibetan issue. The Dalai Lama and the Tibetans have been living in India since 1959. We have setup a government in exile. One lakh twenty thousand of us are living in India, about twenty thousand in Nepal and ten thousand in Bhutan and various other parts all over the world. But our main struggle is going on in Tibet while we are working as their representatives from outside and raising their issues and mobilising public support for the Tibetan cause all over the world. This has been the scenario for the past fifty three years. I was born and brought up in India and adopted the movement when the elder generation were slowly retiring from it. I have been active in the Tibetan movement since the past 18 years. We are facing a lot of challenges and difficulties in the Tibetan movement but we are ready for any kind of challenge and personally I have always looked at these challenges as opportunities where I can learn to be more successful and more effective.

In the year 2002 in Dharamshala, I was on my way to Mcleodganj around 10 at night. It was dark and suddenly a small car stopped in front of me. Six men stepped out of the car

and without saying a word started beating me up I did not understand why they were beating me and I was unable to recognise these men due to the darkness I started bleeding from the left eye When I tried to confront them one of them threatened me to give up the work I was doing for the community I realised it was my activism that was not going down well for some people and they were trying to silence me They were trying to use violence and threats to discourage other activists and create communal tension between Indians and Tibetans

The Indian Government cowed down under pressure from China and is already considering either putting me in jail or detaining me in Dharmshala When the Chinese Prime Minister visited India in 2002 I protested against it by unfolding the banner of 'Free Tibet' on the fourteenth floor of the Oberoi Hotel in Bombay while the PM was there. I was arrested for it. I repeated the same at the IIS building in Bangalore when the Chinese PM was giving a speech on the ground floor of the building They started shooting that on live television I know if I call the media to address our problem no media group will come forward and therefore I had to grab their attention like this

I was eventually arrested When the Prime Minister of China visited again in 2006 they made a request to the Indian government to detain me beforehand. They detained me in Dharmshala for 14 days under 24 hour police surveillance.

Now I want to go a little beyond because this is not just about me and my activism Today the Tibetan freedom struggle is suffering because the Indian government is only looking at the issue from the Chinese perspective. India and most other countries of the world are not concerned about the Chinese population and the Chinese people's problems but are only interested in the Chinese market and money Since the Chinese media is under state control they do not cover anything about the struggle of Chinese people and international media is not interested in this issue Everyday nearly 100 mining labourers are dying and nobody is saying anything against this kind of inhumanity The 'Made in China' products are so cheap because the labour is getting nothing and national resources are being funded through occupying countries like Tibet, Mongolia and East Afghanistan The Chinese government is doing the same thing that the British were doing in India before independence The day is not so far away when China will explode in a fate similar to that of the 'Jasmine Revolution' of Middle East

Nepal is an extension of Chinese imperialism Nepal, as a government, has completely gone under Chinese influence and today 20,000 Tibetans are living in Nepal and they are being persecuted If a Tibetan celebration is taking place anywhere in Nepal the police break it down and take immediate action against the Tibetans residing there There was a time in 1959 60 when the Tibetan struggle had almost died Today the Tibetan struggle is almost united on the inside People like us who were born in India have had the freedom of being educated and recreate the struggle We are grateful to India and its people to help us revive the hope of being free eventually People have been talking about autonomy but our true goal has been independence because only an independent country can guarantee the survival of its people, religion and culture If Tibet continues to be under Chinese occupation then India will have to suffer too because of 42000 km of border that is with China If Tibet becomes an independent country we would recre-

ate the kind of pre-1959 relationship with India where the Himalayan border was the border of brotherhood.

In 1959 when the Dalai Lama came to India there were only 60 army men posted on the border but today the Himalayas have become the most militarised zone in the whole world. Both India and China are militarising themselves and glacier melting is also occurring due to the arms race in both countries which is not in anybody's interest. Unless there are genuine changes in what is happening in China and being done by them the future hope of peace in Asia is very bleak. That is why I always emphasise that this is not a sole struggle for the Tibetan people but in the interests of India as well. Both Indian and Tibetan people need to work together for the independence of Tibet. The people of the Himalayas whether in Lahaul Spiti, Laddakh, Kinnaur, Garhwal, Nepal, Bhutan, Sikkim and in the Northeast, will benefit so much once the Himalayas are free.

**RAJAT KALSAN**
*Advocate from Hisar, Haryana*

***The Bar Association of Haryana, being run by the Jat community, has often engaged itself in activities of threats and favouritism. In one such incident, my father, who is an advocate in Hansi Court with 45 years of legal practice, was brutally attacked by the members of the bar association***

Haryana was formed in 1961 and to date majority of the chief ministers have been Jats as they come from influential Jat communities. The perception of these communities towards Dalit communities is very disgraceful and suppressive. They carry out atrocities on the Dalit community without any fear. The state government is so insensitive towards Dalit issues that if any incident occurs between these two communities or if any human rights defender tries to raise voice against these atrocities, the state government takes a stand in favour of the Jat community. State favouritism to this particular community is such that till last year not even a single FIR was registered under SC/ST Atrocities Act, 1989. The social tensions within the Haryanvi society on caste lines are clear. The influential people have been trying to let untouchability prevail in the society. The Dalits cannot ride horses in their marriages, cannot sit at the same level with the Jats and they cannot take water from the same well.

Here I want to share a horrible incident that took place in Mirchpur of Hissar district. The Mirchpur incident occurred on 21st April 2010, when 1500 people from Jat community surrounded the Dalit basti and set fire to 20 houses and plundered another 50 houses. Afterwards they set the whole village on fire. In this incident two people, an old father and his physically challenged daughter, were burnt alive. At the time when the incident was taking place at Mirchpur, one police inspector of that local area was also present there. Instead of pacifying the people and trying to prevent this incident, he openly supported the culprits. He belonged to the dominant Jat community and was eventually convicted in this case and jailed for more than 18 months. When this took place, all the Dalit communities condemned the incident and pressurised the govern

ment to register an FIR against the culprit. The *Jat Panchayat* or the *Khap Panchayat* as it is known, actively tried to subdue the incident. Eventually, an FIR was lodged but no arrests were made due to pressure from Jat community. We are very thankful to HRLN (Human Rights Law Network) as we filed a PIL in Supreme Court with their help. The SC ordered that the state government should arrest all the culprits within 48 hours, otherwise the BSF would intervene. When the trial started in the session court of Hissar, there was not a single advocate ready to take the case in defence of the Dalit community.

When the proceedings finally started in the Hissar court, our witnesses were surrounded by the opposition party. About 20 people suddenly pounced upon us and threatened us. The situation grew very violent within moments and we requested the judge inside the court premise to consider the threats and the fact that deposing before the court in those circumstances seemed impossible. The judge, however, declined postponing the proceeding. The next day in court all the public prosecutors of the 14 courts of Hissar district, including the district attorney, were present and were lobbying for the accused. The atmosphere during the proceeding had become extremely hostile and the judge also threatened to file a writ against us. We then shifted the case to the Supreme Court and asked the trial court to file a report on the allegation of harassment of lawyers' from the victims' side. The trial court filed a report saying that the allegation was true and subsequently the case was transferred to the special court for scheduled castes in Rohini, Delhi. Three lawyers were representing the victims' side from HRLN, namely Anubha Rastogi, Shreeji and myself. The other side was represented by members of the bar association who are from the dominant Jat community. Since I am from Haryana, the Jats initially tried to offer me money and a lucrative position in the legal department. I was often pressurised to compromise the case.

The Bar Association of Haryana, being run by the Jat community, has often engaged itself in such activities of threats and favouritism. In one such incident my father, who is an advocate in Hansi Court with 45 years of legal practice, was brutally attacked by the members of the bar association. My father had undergone brain surgery. When we were trying to take my father to the hospital, me and my brother, who is also a lawyer, were also attacked by the president of the Hansi Bar Association. I took my father to the Hisar District Hospital. The senior doctor there told me that he had got a call from the Deputy Commissioner of Hisar, asking him not to admit my father. My father was admitted to the hospital anyhow and while he was recuperating there, me, my brother, and two of my lawyer colleagues and some of my relatives were falsely implicated in a case of attempt to murder and an FIR was filed against us. My relatives told me that all the senior people of the bar and senior officials from the Jat community stood against us. My office was ransacked in Hansi and I was again implicated in false cases. We applied for interim bail then and my bail application is still pending in the Chandigarh High Court. There is a magistrate level inquiry against me as per a Supreme Court order. My phone is still tapped. We face several difficulties like this. This is all that I would like to share. Hopefully we will be able to come together and tackle these issues.

**SANDEEP SINGH**
*Student leader*

***When I asked a question to Union Minister Kapil Sibal in a press conference at Ranchi, where he was speaking on behalf of a nationwide campaign on government's view about Jan Lokpal, I was heckled by goons and my friends were brutally beaten up. We filed an FIR. But a counter FIR was filed against us accusing us of intentionally going there to attack Mr Sibal.***

I would talk about the attacks on academicians and student activists, both at physical and ideological level. Normally attacks on student activists are not taken into cognisance and are always kept aside. The attacks on student activists and academics are inspired by organised politics, which can be termed as the politics of "educational reforms", the politics of privatisation and liberalisation of the education sector in our country.

In order to elaborate my argument, I would like to discuss few recent examples of universities across the country. The purpose of citing these examples is basically to identify the politics which is working behind these arbitrary and anti-student decisions.

Ten days ago, the executive council at the Lucknow University passed a decision that there would be 12% fee hike in every academic year. About 100 students protested on 10th November 2011 against the decision in front of the VC office and submitted a memorandum. The students were highlighting that even the existing welfare schemes, where SC/ST and OBC students were supposedly to be exempted from paying fee, were never implemented properly by the university authorities. Why so much of insistence on raising fees overboard, students asked, as they protested peacefully. Once the protest was over, the police attacked the student activists without any provocation. A leading student activist Sudhanshu Bajpayee was seriously injured. Throughout the academic year, one can see heavy police presence in the campus.

A few days before this, a similar incident took place in Allahabad University. I want to add here that whatever academic tradition is left in Uttar Pradesh, Allahabad University is the epicentre of that. For many years student union elections have not been held there.

The university has been famous for its glorious tradition of campus politics. Demanding the restoration of student's union election, many students gathered and formed a joint platform to build the movement for elections. A protest, sit in and a hunger strike was organised in front of the VC office. On the fourth day of the hunger strike, students were brutally lathicharged by the police on the direction of the administration. Many students were injured and five of them were arrested. University administration curved out a so called 'peace area' comprising most of the public spaces of the campus and banned any kind of protest and demonstration in this area.

The new government of west Bengal has come up with an 'education ordinance' which is going to replace the existing decision making bodies like the university court, academic council, executive council by a mentor group. This has already happened in Presidency College. It is a calculated move to stop the representation of students, staffs and teachers in the important decision making bodies like AC/EC. A student group led by AISA, which is running a united campaign against this undemocratic move, went to Vidya Sagar College to distribute pamphlets and for campaigning. They were attacked by the goons affiliated to the student wing of the ruling establishment with the help of the administration and security staff of the collage. They took campaigning students forcibly inside the student union office and brutally thrashed them.

I would also like to mention something about Jammu and Kashmir. The J&K government recently came out with a new employment policy for the teachers and in the process hit at their basic rights. As per this new policy, the salary of the newly appointed regular teachers is also being paid in a kind of stipend mode. They will only be entitled to 50% of their basic salary in the first year of employment, in the second year they will get 70% of their basic salary and after five years they will get their entitlements as permanent workers. A seminar was organised in the Jammu University Campus protesting this move. Prof. Anil Sadgopal was a guest speaker in this seminar. There was a procession organised in the campus just after the seminar and the procession was attacked by police and the ruling party goons.

I would like to talk about a few more examples of such incidents. In BHU last year, the registrar came out with a circular claiming that it (the circular) had been issued by the the UGC which said that no student or teacher can criticise the policies of the government. The BHU campus today is just like a jail. Since the students union elections in BHU campus were stopped in 1997, there is no campus democracy. Gates of the girls' hostels are locked around 6 o clock in the evening and those of the boys hostel at 9 pm. There is a department called 'proctorial board' about which the students studying in campuses like JNU might not have heard of. They have heavy vehicles at their disposal, around 400-500 trained staff retired from army or police forces. They roam around the campus and issue show cause notices and lodge complaints against students for activities even like sitting in a park or roaming in a group. And not to mention that they often beat students in the name of maintaining discipline. This security force also resorts to moral policing and maligning girl students by complaining to their parents on just being seen with their male colleagues. It is rampant over the campus. No one except the RSS can hold any kind of public activity or protest inside the campus.

If we talk about some of the prominent campuses like Jamia Milia Islamia (AMU), the situation over there is also deplorable. Although the Jamia VC makes progressive postures the campus is no different from BHU. There are unwritten restrictions on any kind of activities of the students. The campus, once famous for its cultural activities like theatre, has its own open air theatre fenced with a barbed wire. No theatre groups can organise rehearsals there now. One of the student activists from Rajasthan was trying to address the class in his department on some issue. The squad of the proctor's office raided the class along with 20 guards and gave him a show cause notice. Few days later he was evicted from the hostel. The proctor board also gave a notice to his department for indulging in such political activity.

The students of AMU are continuously fighting for democratic space. AMU is a residential place. People started staying outside because of the draconian regime in the campus. AMU has a provision of issuing non residential certificates as a punishment in the campus. In the last one and a half year, around 1100 students were given non residential certificates and were evicted from the campus. It is highly difficult for students to organise any kind of political, cultural, intellectual activity in AMU now. In 2009-10 the AMU administration collected nearly Rs 11 lakh from students through fines. One can understand the stifling atmosphere in which student are forced to study.

Student's union elections have not been held in Bihar for the last 29 years. Most of the collages/campuses are in pathetic situation where talking about student's right is often taken as a joke.

This is the prevalent situation in most of the campuses in the north and south India. Whatever is happening in Lucknow University, or in any of the campuses in the country, is a form of attack on democratic rights of students. When I asked a question to Union Minister Kapil Sibal in a press conference at Ranchi, where he was speaking on behalf of a nationwide campaign on government's view about Jan Lokpal, I was heckled by goons and my friends were brutally beaten up. We filed an FIR. But a counter FIR was filed against us accusing us of intentionally going there to attack Mr Sibal!

We are discussing the attacks on human rights defenders only in terms of physical attacks, but it is equally important to discuss the neo liberal ideological attacks on student's rights. It has been seen many times that such physical attacks are being done with the intention to curb the voice of student activists who are espousing against these anti student policies. In early 90's, there were unions in Allahabad University, in BHU, AMU, Jamia and most of the places in the country. After the new economic policy regime, students union and right to unionise were openly targeted. Why? What are the linkages between new economic policy and students politics in the country.

Exclusion is the basic component of the liberalisation regime. This exclusion is not entirely possible without a systemic attack on democratic rights. I would like to talk here about a World Bank document of 2004 which accepted that the agenda of privatisation could not be implemented effectively because of the popular movement in the country. These policies are actually meant for exclusion of a large section of population from education and health. They cannot be implemented if they do not destroy the democratic space in the society and in the campuses. In 2002, there was a task force report of the



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World Bank named Promises and Perils of Higher Education in Developing Countries. I want to share with you some part of the report. It says, "political activism means that the students are spending a large proportion of their time on politics rather than education. There are situations where the level of political activism can rise to the point where high quality education becomes impossible. In situations where academic pursuits have been taken hostage, activism may need to be restrained." In the last decade, if you take a critical view of the campuses of north India, you will notice that there is no campus politics and campus democracy. All agendas are enforced. Our policy makers and their policy orientation is tilted towards favouring the interest of the market. They don't want any form of popular resistance from the students. In order to erode such political resistance and possibilities, there is a continuous and vicious attack on student activists and student unions, the latest being the Lyngdoh Committee recommendations.

Lastly, coming to the private educational institutions, a big section of the students enrolled in these campuses are merely contractual students. They sign contracts and bonds while taking admission in places like Meerut, Gurgaon, Faridabad and Noida, where medical, dental and engineering colleges are mushrooming overnight. These institutes have a horrendous condition in terms of privatised education. Students are asked to sign affidavits on the very first day regarding conducts and facilities, leaving little space for democratic proceedings. It is an attempt to institutionalise the privatisation agenda and make this a normative. Kapil Sibal is proposing a new Bill, namely the National Education Tribunal Bill. The crux of this Bill is that no student, teacher or staff can go to the court. In any matter of dispute, they have to approach this upcoming tribunal with the approval of the management. The Bill is approved by the cabinet committee or the group of ministers, and most probably will be passed in the coming session of Parliament. There are a dozen such Bills – the Foreign Educational Institution Bill, Universities for Innovation Bill etc. in the pipeline.

Thus the attack on student activists is not only at a physical level which is a very small part of the entire picture. We need to think about the original sources and cause behind these attacks. My suggestion is that can we think about a kind of Independent People's Tribunal in the coming month where we can discuss the new Bills, the new moves where our laws of the land are being rewritten in order to facilitate the corporate interests in the education sector.

NATIONAL CONSULTATION ON
HUMAN RIGHTS DEFENDERS
19 20 November 2011
India Islamic Centre Lodhi Road, New Delhi
HRLN
Human Rights Law
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# OPEN SESSION

## LENIN RAGHUVANSHI (PVCHR)

We have been having this discussion for the last two days. We should try to talk at this podium on the basis of our experience in the whole world, people believe in global thinking and local action People like us believe in local action We have seen that when people talk about global thinking and national thinking, those working at the grass root are ignored For example, the issues of the human rights defenders working for the Musahar community in north India is not discussed, the local thinking is never discussed This is indeed a huge crisis. There is a silence prevailing over this issue There is a culture of silence. Because of that, it's difficult for human rights defenders to work here. This is the reason why people like us who initiate consolidated movements, there is too much pressure from the local people We are always there in minority as we never give importance to local perspective, local activities and local work We need to understand that local thinking has to be given importance When we talk about the problems of human rights in Kashmir, Rajasthan or north east, it becomes important to take into consideration what local people feel about the issue

Secondly if we want to make this initiative of defending the defenders successful, we should give importance to what people have to say at local level, at places where violations are taking place When Binayak Sen was arrested, there was a culture of silence prevailing in Chhattisgarh The most important point is that we failed to provide a support system to local social activists there Some of our activists and people like us tried to work, we are still working on dalit rights, and it's a continuous struggle We provided them support. At first, there was silence, a culture of silence But gradually there emerged different dynamics and a sense of solidarity amongst the activist at the grass root level. These dalit activists have enough experience, there have age old experience of discrimination We know dalits were being discriminated for last many hundred years, so they have learnt how to live life in adverse circumstances It is important here

to understand how they live their lives and this has a great impact on our work. When we go to the village and try to unite people, some people try to oppose them. We try to create platforms for local thinking in debate and discussion. Their abilities to understand the issues are very powerful. some of them follow the ideas of Bhagat Singh. But we try to understand the heroism of the people. We also try to get the real man out of them and pave the way for real story of pain and emotion in some different way. We organised some ceremonies in the honour of the human rights defenders fighting for the rights of Muslim communities. We provided psychological support to women activists. We also approached the Mushahar communities. We said we are your spokesperson and you are the real leader. We said unlike the people from the government, we are not master, you are our master. The impact of this feelings is when Mayawati organised a conference against us, most of the dalits stood by us. It was not a support from NGOs. It was local support.

After that we used information technology to defend the defender. There was support from all over the world. We try to fight till the last activist gets legal support. Some people might try to say that it's Lenins debate but we try to tell stories of human rights defenders and their struggle at the local level. In these meetings we got peoples' solidarity. We enquired and got details about these cases. Some people filed RTIs, the activists who have expertise in RTI. Some people filed complaints and tried to take up the cases. We tried to organise meetings to get local support. Some people came and joined us. We succeeded in creating dynamics. As a result, the victims now fight for themselves. We also tried to get some legal support for them. We have started organising them and got some international support too. Today, people come and talk to them. If you are not going to support the local human rights defenders, if we are not able to break that, then supporting the human rights activists in Lucknow only is not going to solve the problem. The local system is already broken. So, we have to support the local activists. In Manipur, we have to support Sharmila. We are successful in getting support for activists in Manipur, in northeast, and somehow we are successful in doing that. We should think about how much international support we can get for the activists. Think about this, in one meeting, we got more than 46-47 cases in UP. How many cases are there, who are the people who have expertise on these issues, who will do what, we have to understand all these dynamics and we need to develop some mechanism to do our work.

## SUHAS CHAKMA (ACHR)

This is a very tactical session in the sense that there is a need for some kind of broad alliance. "How do defenders defend themselves?" There is a clear message on what we have spoken since yesterday. There are three issues which I want to flag and then I will come back to the text. I think there are root causes of human rights violations which we have to discuss. Sometime, I was wondering why we are discussing these issues, when we are meeting here for the human rights violations. Second, human rights violations are beyond the root cause violence, which is a symptom. In the talk, the people are talking to address the symptom

as well as the root cause of violations. What are we here for basically? For the people, people who are defending violations of human rights, which are symptoms of root causes of human rights violations. So, what we are here for basically is for the defense of human rights defenders. What I would say that in many meetings, networks are created and collapsed. We have to be very specific about what we want to achieve, we have to have clear ideas and a clear mandate; it has to be the role of each and every individual. Before that I am going to make a point, I want to say that there is something for the human rights community to learn the lesson from the media community.

Recently, Justice Katju said that there is a need for regulation of the electronic media. I think he has very valid point and we have seen the way the entire media reacted to that proposal. But I think when we come to human rights defenders, obviously we are not able to garner the same unity, especially when there is no difference whatsoever, of the basic fundamental principles on which we all are working. What we are trying to do basically is to create that space, that platform for all the activists from the country to come across and share their views. That is what the platform is all about. We have to act swiftly, from the perspective of defending the human rights defenders in a manner, we do not infringe or we do not create any kind of turf war with the kind of things the people are doing. If you ask me, I would say emergency response, contacts, solidarity for the human rights activists, we need them. Because we are not able to create them, that have to be linked with the media, and also create eminent peoples' response group and action alert mechanism.

But again, we have to understand this action alert is not for the victims of violence of human rights alone because each and everybody are being inflicted with it. What we are trying to do here is action alert at large, with specific context of the human rights defenders. Again, legally if you say, victim's complaints against the police, it becomes too broad. I think legal aid, medical aid, counseling, and documentation all this are acceptable in the context of defending the human rights defenders. So long as we restrict ourselves to with that, there is possibility of being successful for being able to create a platform where we would be able to work together. There are number of issues like special focus on the government of India's jail visit, involve law colleges, law students etc. In my view, these are areas where individual organisations are already working on, possibly they have funding, and possibly they will come together. They have specific projects. I will give you one specific example. We are in a process of writing on the government of India's report to the Human Rights Council on the Universal Periodic Review. There is the working group of Human Rights in India and UN. But at the same time, in the five pages document, it is not possible, for the working group, to reflect

on the 100 organisations working in this country. So, the people will come back with their own recommendations and reports. So, we have to keep that in mind that, we do not in any way, step on other's activities.

So, I would say that we could restrict ourselves and focus on human rights defenders. Finally, I would like to say that we have discussed for the last two days about the stated and obvious object. We also have situations where human rights defenders are prosecuting each other, for whatever reason, whoever is wrong, whoever is right, I don't want to talk about it. I have my own experience; People here have prosecuted each other for whatever reason. The second reason is there is turf war; there is lack of mutual trust among the activists, because the very basis on which we start the foundational cooperation is in a way at some point of time, gets broken easily. We may not discuss this in public forum, but whenever we want to create a mechanism, we have to remember that in the fraternity of human rights defenders, there are big differences which actually prevents the formation of collective opinion and that is reflected more pronouncedly than anywhere else, as in the case of team Anna, with respect to Swami Agnivesh versus team Anna, but I wouldn't say beyond that.

But I have said that these are issues we have to address and should take cognizance of. We just cannot only focus on the state. There are number of issues, where, human rights defenders' actions are actually undermining the activities in actions and endangering all human rights defenders. I would like to give one example, when government of India came out with an order that if you are organising an International conference, you have to take the permission from the Ministry of Home Affairs. We never take permission, we do the meetings. Then they come and pick up the people, throw them out of the country, deny them their Visas. You also know, I want to mention that Peoples' Union of Civil Liberty (PUCL) went to the Supreme Court, not enough consultation was held and the Supreme Court actually upheld the validity of the executive order. So, it became law. If you ask me, I would say that there is no crime for you to organise a meeting. We are a democratic country, we don't need permission to organise a meeting, why we have to go for permission? So, I think, we have to consult each other on broader issues. Whether this kind of executive orders, the FCRA issues or any other law which concerns the NGOs and because the NGOs do not consult, it becomes a problem. So, one of the key responses has to be, to the law framed by the government of India, if it infringes the rights of the NGOs then how the NGOs collectively respond to it rather than hurrying it out.

## ANIL CHOUDHARY (PEACE)

I first apologise for not being part of the discussion yesterday. For the first time, I heard about the concept of human rights defenders about twelve years back or so and that was a time when Amnesty International had done some projects with this title. And we had organised four regional workshops and one national workshop on this issue. And if we can lay our hands on the reports of the workshops even today the whole thing was worked out in much more detail but nothing happened.

The requirement was expressed that this is high time to come together We need some enthusiasm to be able to act together when defenders are attacked My question to Colin is: who is going to bell the cat? When I reflect on these things, I recollect that the Amnesty International had taken the responsibilities then till holding workshops, writing reports etc After that, they are not ready to bell the cat Similarly, whoever organises national level meetings, those organisers are not prepared to take responsibility of whatever will come in the way So, that is why we should think before closing this seminar, whether Human Rights Law Network which, by its nomenclature, seems to be mandated for doing these things, is ready to take the responsibility or not? This is my first question Moreover, if you say yes, what should you do? Just very briefly and quickly, I was going through the activities part the aspirations here are hinting at seven types of functions that need to be performed, one related to documentation and research, and the other related to solidarity action which should include protest, fact findings, sending fact finding teams, holding IPTs, legal support which includes 24 x 7 helpline for local activists and for local lawyers Because, if you are listening to presentations carefully since yesterday, this is a very big requirement at the local level First you wouldn't get lawyers, if you get lawyers you don't have support and adequate advice from the seniors So, this is the third function which is required to be performed from a central place

Colin has advised to first start fact finding, and then helpline I would say first is documentation and research, and the second is solidarity action which has three components – protest, fact finding and holding IPTs Third is legal aid & support, this supports includes running a helpline for local lawyers and activists Fourth is awareness through campaign and public education about the issues on which we are working on (human rights). Fifth, outreaching to the legal fraternity because sometimes you also hear that lawyers available to stand on such issues are decreasing

So how will it increase unless we focus on this function and which may include regular visits, holding events in law schools and law faculty and in the district level bar associations etc It is a function in itself and can not to be taken for granted What has come and since yesterday is the whole issue of rehabilitation and social support to the victims like human rights defenders, when they are attacked or when they are jailed, when they are turned from defenders into victims In such a situation a great deal of social support and rehabilitation is very important

And seventh, while I was listening to Prashant Bhushan in the morning I felt that these are very important components in the policy of influencing and lobbying Like you are saying that in false cases there should be punitive provisions for the people who are responsible for initiating false cases. The question is who will do that? So, there has to be a group which should be functioning in this area It will prepare the document and do the lobbying so that those kinds of clauses are amended which can result in reforming human rights institutions. So, seven types of functions emerge from here

Now I will end by saying that we have lost a lot of time, we shouldn't loose more time Someone like Colin and his organisation should take the responsibilities of 'belling the cat, and we should look forward and form a massive committee at the national level I can point out what kind of people should be there in the committee First thing is we

should get hold of around ten prominent people, whether they are able to travel or not If their names hold value and credibility, like Justice Krishna Aiyar, Justice Sachchar etc All these prominent people should be part of the committee We should have a minimum of 10 such persons. All the Judges whoever go in solidarity with the IPTs, people like Justice Sawant, ten prominent people should be part of the committee Three to five representatives from each state, so that if we make more states in the part of this, we will have more persons in this endeavour

Then, about five to ten senior Supreme Court lawyers like Prashant Bhushan, Colin, Sanjay Parikh and others. Thus, you have those types of inputs. Then five or ten members from the law school or university faculty representatives from artists, writers, poets, actors, representatives from media, and network from peoples struggles, NGOs and support groups We should have 200 persons part of such committees There should be a target This committee can have seven sub committees based on discussions and public support So, we can have this big committee meeting once in a year and sub committee meetings more frequently But the most important thing here is that this whole exercise should be supported institutionally, by some infrastructural backing and some full time support staff Some full time researcher should be the in charge of this committee We should visualise our target like this and then start moving step by step towards this target But precondition for this is, and again I am repeating myself here, that HRLN has to agree to take this responsibility Only then would it be possible

## KAVITA SRIVASTAV (PUCL)

I am just going to endorse what some of the points that Anil and other speakers have put across. Whether we call it a network or a platform, I am basically responding to this kind of framework that Anil had given. Since you are here, you should get clear idea or at least you should see other version of thoughts If you take an idea to come to the final points, here at least forty-fifty endorse their ideas. We should be clear in thinking as to what we are demanding.

Now I really think that within this, the title Human Rights Defenders (HRDs) is limiting. The title human rights defender is limiting because we are basically talking about all the people It should be, either we call it solidarity in action network of activist and human rights defenders or network of activism of human rights defenders to show the solidarity or you may call it whatever you like the term you can You can call it HRD But if you want HRD terms in it because sometimes its useful to have a term, because in any case of the kind of violation that we heard of in this last two days, we cannot fight with just this country We have to take them on the platform from the outside here The voice has to go right from local to global level And if HRD is a terminology which helps us in some platform, it is okay But definately, for activists, something has to come We don't have network or a platform

And, there should be solidarity in action Solidarity is so important a term for us, because there is a kind of isolation when I think there is so much heard in the meeting of last two days While there are a lot of other things are coming, but just isolation, how each one

felt and that kind of solidarity in action because we want this should change. We want to display our power. I am repeating again and again because we do not want to be disempowered. We want to show that we are powerful and for alternative power, we want to generate whatever network you call it, and this is just a kind of hint towards that. Now if you go by the seven categories, the way Anil has trying to put this whole thing in seven categories, I agree with him regarding the whole eminent persons sector. But I want to say when we name something as action alert, contacting international institutions, now suppose, we take this little thing or contacting human rights defenders, we are contacting human rights commission, contacting group solidarity or whatever to the action alert group, we all have lots of action, not just sending an email or something like that. I work, almost every week I send something to the human rights commission and I have not given up so far. I keep sending because I think that makes them work. But it is not easy. We see merely an action alert is not an easy task because suppose somebody say yes, what next? Is the person available for your documentation?

Further, we are always loaded with some kind of work and I tell you a few cases, like NHRC, in fact, the file is lying on my table. I am unable do it on time, I am so scared that I am in loss of time because if I send it to you, and you are serious, you are the secretariat, I send it to you. I get back to you, what about the response? So, it is not easy for anyone to do the task, it is not easy. S/he is busy in his work, s/he may not be contacting you. So, really I think when you do networking, especially this kind of work, authenticity of information is important. Because the other side, whom you put hold of it might counter it. You know we are traditional human rights activists, and we do our work through fact finding. So if we are unable to fact finding ourselves, we call the local activists to do so and those kinds of things, it's very difficult. If you look at three things, we can begin with is contacting human rights organisations, international institutions and groups in India. I think the value will be authentic, I mean at the start we will response to it, and then we will take to the logical conclusion.

So, I would go back to my learning and I feel the best way to begin such things that you keep on learning, network will be formed, the platform will happen, you begin you secretariat and in secretariat, you start with networking. I think many of the cases which came to us at the last moment, we begin with some of that. I think if we have to start the secretariat first, my suggestions very concretely at this point are that we are working for the secretariat.

When the right to food secretariat came up, 15 national networks came together. And now as we take on new networks, the group decides. We survived because of the secretariat and that was the competence in the secretariat. We got the students mostly from University, who are so committed, work eighteen hours, do action like this and that. We work together and then we formed an advisory group kind of a thing and of course we work for them. The advisory group is that of five to six people because the whole groups would not be here. I used to go to Jaipur, somebody will go to somewhere else. So, advisory group has to be local and some one who can write or respond to an email. So there has to be an advisory group and I am willing to play whatever role you ask, which of course, also be by putting PUCL institutionally in the sense that it is backed by PUCL.

fully, not by the PUCL Rajasthan. We have two, three people from PUCL. I am just an individual member of PUCL.

I think this support, relief and rehabilitation part, I don't think this can be done centrally. This is not a task that we can do centrally but the idea can be understood by the funding, support etc., but it has to be done locally. For that, may be we need a national support, but the task is to be done locally. So, I have also written on my note that someway, you got to think about building in a state, a local network kind of a thing. It is very good idea like rehabilitation, relief and reparation but you can't do that now. It is a menace, it is too much of a burden and I mean the secretariat can only flag the issue, it is not convenient. Now both will take your time and you know that. We are not running an alternative kind of a thing, but we can ensure, we can take up issues, we can contact the people. This should be a plan and idea but it can not be the centre of our activities. This is the comment I want to make.

Yesterday we were talking a lot about the documentation part but I don't not want to go into details. But regarding human rights commission or other commission, it is not only the reform of these commissions, it is to make them accountable. All of us can start one campaign, we want to put this on a network. So, let's make these institutions, that came out from our public money more accountable. And all those which don't exist, then what can we do? For example, in Rajasthan, there are seven commissions, but Chief Minister Ashok Gehlot refuses to appoint any officials in these commissions. The groups working there can support us to make them accountable. So making them accountable and initiate amendment through laws, there are this whole set of laws which we can get rid off. For example, if we want to take the case of NHRC, we should put that in the priority list for reform and so on. But we need amendment in so many laws which need amendments not only in protection of human rights act. If you keep having all you special laws, all your draconian laws what can you do by rectifying them? They can do some seditious thing, they can harbor something, they can arrest someone under suspicion etc. Reforming NHRC is not just a solution. May be, we can come together. For example, let's start with sedition. PUCL has initiated a campaign with lots of other organisations on repealing sedition, we can begin with sedition. We can all come together, it can be our campaign activity.

I really want to come back and want to end with that one thing, that can we have that as our priority of the secretariat, to really take up matter of the conflict areas. I think I learnt a lot by the Punjab presence here and I am very thankful to Colin to connect us. We have been into northeast and thanks a lot to our friends like Babloo, who is sitting here. we saw certain things, we learnt a lot but I would like to say something about Punjab, that most of us experienced while growing up. We have visited there and we should learn a lot from the human rights workers, that how in Punjab they are contesting cases, how they are getting rid of all the cases, there are some understanding. I think we have to form sub groups in conflict areas because, in the rights to choice cases where some of us are engaged in or those kinds of cases which is equally serious, it gets left out. So, the sub groups within this group working in conflict areas could be priority for all. I don't know but there has to be some sort of dialogue between states, for example I would really say

that we can learn from the Chhattisgarh and Punjab experience. We can learn from the legal works of each other. So, special focus should be in the conflict area, like visit to jails there and meeting the defenders there.

In Gujarat, all the defenders like Shabnam, Mukul and many others who are now in jail so we have to visit these jails and find out what they are doing in jail and their work must be highlighted. In Binayak's case, we manage somehow and now he is out of the jail and many others also, but what about those we don't know. So I think this meeting will be really a honest attempt to do little bit in the conflict area, one of my friends sitting here said that in the cases of the forced disappearances and fake encounters, nothing comes from India, other than Kashmir, a little bit, nothing come from India, we faces every day in Chhattisgarh on the International platform. Then why aren't we putting together something and sending it to the International platform. If we can make a report about all these encounters and all these eliminations that will be a good thing. We fought them in our courts, we raised them here, but we have not taken up these issues to an international platform. So these are some of the some important points I wanted to make.

When we are starting this initiative, 50-60 organisations probably came on board and everybody comes to the coordination. Then we form this small advisory group of 7-8 people and set up a secretariat. The secretariat can be based in HRLN, it can be based in anybody's office, in Shabnam's office or in PUCL office. The secretariat can be housed in a joint space, like the 'Khalra Centre', which is a neutral space. The name itself is such an inspiration. So, if we have it like that then it's workable. Because at this point of time no one organisation can manage everything. So, most of the organisations present here should endorse the idea and taking from there, we set up a working committee that is eight ten of us, who are going to deliver, like Anil is very good in coordination, and we can take it forward from there.

## SATNAM SINGH

I am just following on, because we are having similar discussions and learning from each others' experiences and I can give you my perspective as a lawyer practicing in UK and about the perception of India. I think we touch upon this issue yesterday. This conversations and issues were not being brought out at the international arena and as we can follow it right from our conversation that the UN working groups working on forced disappearances, routinely publishes how many cases come before, forced disappearance cases and rape accused killing and we learnt the hard way, what I mean by, is the Sikh communities when 25,000 case of forced disappearance happened. The Sikhs only learn how to use the mechanism and I think it was in the mid 90s to the early 2000 and even in that stage, it was only a couple of hundred cases we brought before UN working groups. Now there are number of cases in Chhattisgarh and others areas, in the conflict area of Punjab and it is so important these cases are documented in a way the UN Working Group understands because the one benefit you have of that there is an annual report and the Indian government is required to give an explanation to the UN Working Group about the current status of those cases. The one benefit that you have, of those kind of

mechanism is that, the government here can't delay the cases for years and months and things can't be pending. They have to give response in these cases on an annual basis. Now, during the discussion that we had in UN with the representatives of the UN Working Group, they have consistently asked India on access to place like Kashmir, to Punjab and I think, the most pressing at the moment is what is going on in Kashmir and in the maoist affected areas. If there are sufficient number of cases that are coming from India, the UN Working Group would say to the Indian government that they want to do a fact finding study and they won't just accept from the government, their version of things that they would go to the conflict areas, try to speak to them and with the groups who are working there and then will do their investigations.

Justice is now being globalised and there are so many examples. But the irony is that Libya has signed out of the International Criminal Court and Prashant Bhushan this morning made a very important point about why there should be momentum within India to sign out of the International Criminal Court. Because somebody like Gaddafi, a dictator, we know what he was about, signed up to the International Criminal Court and he had most to lose by doing that. So, what happened after the invasion of Libya, on the uprising that happened there? The Libyan people were saying that this person is a tyrant, bring him before the International Criminal Court. Lot of these problems you have, in my own perception, without getting the sanction. You need witnesses. This is how we suffered in a mass, whether it is genocide or in a crime against humanity. You don't need anybody's permission. There has to be a prima facie case and simple, credible evidence. So, I think, one of the steps, that positively needs to be taken forward that I see from the perspective of being a Sikh, as a human rights lawyer, learning from the difficulties that we had, for not being able to achieve justice properly from the Punjab cases, in the 1984 Delhi cases. This needs to be our goal now.

Genocides and riots are not only in India, but there needs to such a focus, there needs to be such grounds of opinion within India that, if you cannot deliver justice here, leave it to the International Criminal Court. But the common argument which binds here is that whether there is an attack on our sovereignty or not. Other countries are signed up to this charter. The only country, that has something to fake, country like Israel, who because of their human rights violations and genocide against people of Palestine, will never sign up to the International Criminal Court. I think, Pakistan has also signed up with the International Criminal Court. There was a movement in Southeast Asia for these countries to become members of a globalised system of justice, where, if justice can not be delivered, it can be enforced there. I know, our focus is human rights defenders. There are also some committees, some working groups, as specifically for the human rights defenders. Now we can say here that this group potentially represents the aspirations of a billion people. Within each conflict zones and in each area, there are probably hundred and thousand of cases of human rights defenders, these needs to be documented and sent to the working groups. When they realise that there are hundreds of cases, if not thousands of cases, again is the number, that prompts action, in places like UN and internationally. These things need to be brought out.

Suddenly, after Binayak Sen's case, anybody who had never even heard about the con

facts in Chhattisgarh, all the perception in the west was that there was a prominent human rights activist who has been forcefully imprisoned and suffered from these things. The next question for those of the concerned like minded individuals or whether its EU or other Institutions, why he is being imprisoned in the first place, whether there is a conflict going on in Chhattisgarh, and whether its soldiers, Salwa Judum or SPOs etc. These conflicts, these issues need to be brought out in the International Arena. I don't pretend to have all the answers, not even the expertise. But, if there are people, who are willing some to do some documentation work, I think, it will be Delhi centric and I think HRLN can be involved in this. You have the people you can have some training on how to fill in the UN performa. They are not very complicated. In fact, some of the work that I have seen here is more than detailed in terms of what is required for the cases to be done. But there needs to be mechanism, a fluttering way, of things coming to a core, whether it is based in Delhi, ideally it should be based in Delhi. But, on an annual basis, these cases can be presented. The beauty of this is the UN working group publishes its reports online. So, you can see the work that is being done, you can count the cases whether you have responded back to or not.

## PARAMJEET KAUR

Dear friends, we have discussed here most of the issues and we have thought to work on the rights of defend the human rights defenders. We have to give them moral support. We should not emphasise more on the name of the organisation. I am sure we are going to face difficulties when we start the work. So let the governments do its work and we will do our work. Whoever may be there in the government, state sponsored violence is bound to happen, and we have seen that in last so many years.

I am happy that in spite of all these problems we are together. In this consultation, lots of issues came up during the discussions, issues of the states, issues of students, issues of individuals and I think, this is really a great thing. Because whatever work we are doing, we need a platform to continue our work. For this whole endeavour, the entire credit goes to Colin for organising this meeting. We are going to establish a set up, and we will continue working. During the course of work, it will be clear how and in which way we can take our work further. I am really happy to initiate this centre. We will work collectively now. There will be documentation of our work. Whatever we have decided here, I am now going to announce that the work done by Sardar Jaswant Singh Khalra is an example for the human rights defenders. Whatever work was done in Punjab, the work done by Sardar Jaswant Singh Khalra is really a great contribution. I am now going to announce, with consent from the organisers, the Centre will be dedicated to the name and work of Sardar Jaswant Singh Khalra. The whole world knew about the work done by Khalra Sahib. Now, we are going to work in Delhi, the national capital. We can now wok on the violence happening in Punjab and in other states, and we can take our work to the international level.

I would like to congratulate all of you. When I have taken the work so far done by Sardar Jaswant Sigh Khalra, I am working for the innocent victims, I am not doing the work for

myself. We are human rights defenders. We should let the world know what is happening in India. The structure we have now is very important and I would like to thank all of you for recognising the work of my husband. We are taking inspiration from his work. Again, we would like to evaluate our work, at least for once in a year, so that we can look at our output, key reasons for our failures or sucesses, etc. The people who are gathered here today are experts in their own field, and we just need coordination work. That's all I have to say.

# KHALRA CENTRE FOR HUMAN RIGHTS DEFENDERS

During the two-day (19-20 November 2011) national consultation on the state of Human Rights Defenders (HRDs) in India, it was felt that there is an urgent and pressing need to develop a coordinated response to the increasing and organised attacks on and intimidation of human rights defenders

## COALITION FOR PROTECTION OF HUMAN RIGHTS DEFENDERS

While there have been many efforts by various organisations to document, issue action alerts, to provide legal and medical aid, and so on, the CPHRD has been formed in response to the urgently felt need for a coordinated response to these organised attacks on human rights defenders. The term human rights defender is used here in a broad rather than a limited - sense, to imply all those activists who are working to ensure the implementation of the Indian Constitution, whether as individuals, as parts of NGOs, civil society organisations, peoples' movements or political groups.

CPHRD is a collective of organisations and individuals working throughout the country on a range of democratic issues and is committed to providing solidarity and support to human rights defenders under attack for their work Recognising that work on defending the defenders is already underway, this platform has been created to harness these multiple efforts by utilising the expertise and experience of these groups and organisations in a larger collective. The network will aim to strengthen the task of defending the defenders through sharing of experiences and resources—while ensuring the integrity of the work that everybody is engaged in This platform is not meant to replicate the activities of any of its constituent organizations, its mandate being limited to the defense of human rights activists.

## KHALRA CENTRE FOR HUMAN RIGHTS DEFENDERS

During the consultation, Human Rights Law Network (HRLN) and World Sikh Organisation (WSO), with support and collaboration of several other human rights organisations and activists, announced the establishment of the 'Khalra Centre for Human Rights Defenders' in India

Sardar Jaswant Singh Khalra was a pioneering human rights activist who played a very crucial and exemplary role in exposing the disappearances and illegal cremations of thousands of Sikhs by the Punjab police, during and after 1984. He painstakingly documented all the facts and made his findings public in Canada in 1995 during a visit organised by WSO. Upon his return to India in September 1995, Khalra was abducted by the police that illegally held him in custody for 40 days and then murdered him in cold blood. His widow Paramjeet Kaur and WSO have been working tirelessly to realise the dreams and ideals for which Mr Khalra laid his life. The Khalra Centre for Human Rights Defenders has been established as a tribute to his work and legacy. In Paramjeet Kaur's words, "the idea is also to try our best to stop what has happened to Sardar Jaswant Singh Khalra and other HRDs."

The centre is working as a focal point towards protection of Human Rights Defenders in India. The centre provides support to people engaged in upholding human rights, directly or indirectly. While the primary focus of the Khalra Centre is to provide legal aid to human rights defenders under attack, it is also trying to engage with a variety of activities ranging from coordinating with other groups on emergency response, extending solidarity, issuing action alerts, contacting human rights commissions, legal awareness, documentation, medical help, formulating public opinion and developing other forms of responses. Towards this end, the centre is closely working and coordinating with various human rights groups, public health organisations, activists, journalists and lawyers across the country. The process of identification of HRDs under various categories and documenting their profile has already begun. We are in the process of creating a comprehensive database which would include all necessary details on human rights defenders working in sensitive areas on crucial issues, and who are either under attack or face potential threat. The centre is also trying to build a nationwide network of human rights defenders from all states. In this regard, the centre, with the help of various local and regional organisations, is going to organise consultations and preliminary meetings to discuss the modalities at local and regional levels. The Khalra Centre will also publish reports on the state of human rights defenders in India..

Ongoing and Proposed Activities in coordination with other organisations:

- **Emergency support**
  - — Issuing solidarity statement
  - — Issuing action alerts
  - — Contacting the human rights commissions
  - — Contacting international institutions
  - — Contacting human rights groups/activists
  - — Providing safe houses in case of emergency or fear of attack

- **Legal aid**
  - — Helping victims to file complaints against the police
  - — Punishment/prosecution for false cases
  - — Compensation for loss of dignity years lost in litigation, effect on families
- **Medical aid**
  - — Rehabilitation centre for the victims of torture, recovery place for burn out
  - — Counseling
- **Documentation of all attacks on defenders**
  - — Profiling of victims
  - — Profiling of perpetrators
  - — Jail visits in conflict areas
- **Training of activists and para legals**
- **Campaign**
  - — For amendments in the Human Rights Act
  - — For release of HRDs
- **Publication**
  - — Manual for Human Rights Defenders
  - — State of HRDs report
- **Networking (of)**
  - — Human rights and other social organisations
  - — Hospitals for medical aid
  - — Lawyers for legal aid
  - — Journalist for media coverage
  - — People's movements for mass mobilisation and pressure
  - — Formation of eminent people's response group
- **Advocacy on and with**
  - — Creation of a media team
  - — Amendments in the Human Rights Act
  - — Members of Parliament, police and the administration sympathetic to peoples' movements
  - — Reform of the human rights commissions and other commissions

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HUMAN RIGHTS ACTIVISTS HAVE COME UNDER REPEATED ATTACKS RECENTLY. RIGHT TO INFORMATION ACTIVISTS HAVE BEEN KILLED AND MANY HAVE HAD CASES FILED AGAINST THEM. JOURNALISTS HAVE BEEN JAILED IN CRIMINAL DEFAMATION CASES. ATTACKED, SOME OF THEM KILLED, AND MEDIA HOUSES HAVE HAD THEIR OFFICES RANSACKED. TRIBAL ACTIVISTS, PARTICULARLY IN CONFLICT AREAS, HAVE BEEN HOUNDED BY THE POLICE AND MANY OF THEM ARE IN JAIL TODAY. THE SITUATION HAS NEVER BEEN SO DIRE. THE NEED OF THE HOUR IS TO PROTECT AND DEFEND HUMAN RIGHTS ACTIVISTS IN INDIA TODAY.

THERE HAVE BEEN MANY INITIATIVES IN THE COUNTRY OR DEFENDING THE DEFENDERS AND SEVERAL ORGANISATIONS HAVE DEVELOPED EXPERTISE IN VARIOUS AREAS SUCH AS DOCUMENTATION, ACTION ALERTS, APPROACHING THE UN SYSTEM, LEGAL AID, MEDICAL AID, COUNSELING AND SO ON. THESE INITIATIVES HAVE DEVELOPED AS A RESPONSE TO THE CRY FROM THE GRASSROOT ACTIVISTS WHO HAVE BEEN HOUNDED BY THE POLICE IN MANY STATES.

IT IS IN THIS CONTEXT THAT THIS REPORT IS BEING BROUGHT OUT WHERE A NUMBER OF ACTIVISTS, LAWYERS AND EXPERTS - MANY OF THEM VICTIMS THEMSELVES - FROM VARIOUS PARTS OF INDIA, HAVE COME TOGETHER TO EXPRESS THEIR CONCERNS AND CHALLENGES, AND TO SUGGEST WAYS OF STRENGTHENING THE SOLIDARITY AND EFFORTS TO DEVELOP EFFECTIVE RESPONSES TO INCREASING ATTACKS ON HUMAN RIGHTS DEFENDERS IN THE COUNTRY.

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